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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03–905–1 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Extension and Modification of the Exemption for Shipments of Tree Run Citrus

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule extending for one season the exemption for tree run citrus under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). This rule continues in effect an exemption for shipments of tree run citrus from grade, size, and assessment requirements for the 2003–04 season. This rule also continues in effect an increase in the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety and requires growers to identify their containers with their name and address. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

EFFECTIVE DATE: January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Gueber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect an extension for one season of an exemption to ship tree run citrus free from grade, size, and assessment requirements under the order. This rule also continues in effect an increase in the limit on the total amount of citrus a grower can ship under the exemption from 1,500 boxes to 3,000 boxes per variety and requires growers to identify their containers with their name and address. This extension is for the 2003–04 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. This action was recommended unanimously by the committee at its meeting on July 1, 2003.

Section 905.80 of the order provides authority for the committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the committee with the approval of USDA may specify. No assessment is levied on fruit so shipped. The committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

Section 905.149 of the order's rules and regulations defines grower tree run citrus and outlines the procedures to be used for growers to apply to the committee to ship their own tree run citrus exempt from grade, size, and assessment requirements. The provisions of this section were originally established just for the 2002–03 season. It allowed growers to ship a maximum of 150 1⅗ bushel boxes per variety per shipment up to a seasonal total of 1,500 boxes per variety of their tree run fruit free from order requirements.

This rule continues the amendment to § 905.149 and the extension of its provisions for another season. This rule extends the exemption to ship tree run citrus free from grade, size, and assessment requirements as specified in § 905.149 for the 2003–04 season. This rule also continues to amend § 905.149 by increasing the limit on the amount of citrus a grower can ship during the season from 1,500 boxes to 3,000 boxes

per variety and by requiring that each container in each shipment be labeled with or contain the name and address of the grower. Growers must receive approval from the committee before they can utilize this exemption.

According to Florida Department of Citrus (FDOC) regulation 20–35.006, ''Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree.'' Also, FDOC regulation 20–62.002 defines wholesomeness as fruit free from rot, decay, sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to implementation of this exemption, all tree run citrus had to meet all requirements of the marketing order, as well as State of Florida Statutes and Florida Department of Citrus regulations. Even with this rule, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus regulations, including inspection and any container marking requirements. However, growers will be able to pick, box, and ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

During the past few seasons, small producers of Florida citrus have expressed concerns about problems incurred when trying to sell their citrus. These concerns include increasing production costs, limited returns, and the availability of markets. For some growers, there is limited demand for the variety of citrus they produce or they do not produce much volume. Consequently, they have difficulty getting packinghouses to pack their fruit. These problems, along with market conditions, have driven a fair number of citrus growers out of the citrus industry.

According to Florida Agricultural Statistics Service, over the past five years, fresh grapefruit sales have dropped 22 percent and fresh orange shipments are down 16 percent. This means fewer cartons are being packed. This can cause problems for varieties that may be out of favor with handlers and consumers, or for a particular variety of fruit where there may be a glut on the market. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and, therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. During the last five years, only the 1999–2000 season produced on-tree returns for processed grapefruit that exceeded one dollar per box. Over the period from 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. The average on-tree price for processed Florida oranges during the 2001–02 season was $3.08 compared to $4.50 for fresh oranges.

In addition, the costs associated with growing for the fresh market are greater than the costs for growing for the processed market. While the costs of growing for the fresh market have been increasing, in many cases the returns to the grower have been decreasing. The cost of picking, packing, hauling, and associated handling costs for fresh fruit is sometimes greater than the grower's return on the fruit. In some cases, where the cost of harvesting exceeds the returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

Consequently, growers are looking for other outlets for their fruit in an effort to increase returns. Some growers believe secondary markets exist which are not currently being supplied that would provide additional outlets for their citrus. They think niche markets exist that could be profitable and want the opportunity to service them. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received. These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe they need to bypass normal handler operations and the associated costs for it to be profitable.

To address these concerns, the committee recommended that for the 2002–03 season producers be allowed to ship small quantities of their own production directly to market exempt from order requirements. The exemption was for the 2002–03 season and expired July 31, 2003. A final rule on this action was published in the **Federal Register** on January 29, 2003 [68 FR 4361]. The committee agreed that following the 2002–03 season they would review the information provided by growers who applied for and used the tree run exemption to determine if the exemption should be continued.

During the 2002–03 season, 75 growers were approved to ship under the exemption. Approximately 25 growers actually used the exemption, shipping a total of 5,000 1–3/5 bushel boxes of oranges, grapefruit, tangerines, and tangelos. Those producers who took advantage of the exemption believe the program was successful. They were able to sell their fruit and supply markets not already supplied by packed fruit.

The growers who used the exemption believe that one year was not long enough and that it should be extended. They think more time is needed to determine the benefits of the exemption and whether it should be extended on a continuous basis. Growers believe to successfully develop new markets they must demonstrate they can consistently supply new markets with quality fruit and this cannot be done in a single season or without the exemption.

Growers also believe more markets exist. They think more time is needed to identify and research potential markets. In some cases, potential markets were not identified until late in the 2002–03 season when there was not enough fruit available to supply them. Growers want the opportunity to try to supply these markets in the coming season.

In addition, some interested growers did not take advantage of the exemption during the past season. Some stated if the exemption were to be extended for another season, they would use it to try shipping tree run citrus. By extending the exemption for another season, growers will have more time to utilize this opportunity and it will provide the committee with a better indicator of the level of interest and success.

There was also some discussion that the previously established 1,500 box limit on the total amount of each variety of citrus a grower could ship during the season may prevent growers from fully developing new markets. One concern expressed was that should a buyer want additional fruit during the season, a grower may not be able to supply it because they had reached their shipping limit. Another concern was for growers that only produce one variety of citrus. The previous limit of 1,500 boxes per variety for the season could prevent them from utilizing more of their fruit. Also, a producer may identify two or more potential markets, but with the limited amount of fruit that previously

could be shipped, the grower could only supply fruit to one market. Growers believe raising the limit on the number of boxes per variety they can ship for the season will allow them to supply the markets previously developed as well as develop additional markets for their tree run fruit.

The committee reviewed this issue and discussed the concerns of small growers and the problems encountered during the past season. The committee determined that offering the exemption for another season will provide additional information on how fruit shipped under the exemption was received by the market. It will also provide a better indication of whether or not other markets exist that packed fruit is not currently supplying, where these markets are located, and approximately how much fruit can be sold in such markets. Extending the exemption also gives other growers an opportunity to try it.

Tree run fruit will be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the state, and such markets have been successful. Continuing the exemption for another season allows growers to sell directly to similar markets outside of the state, supplying markets that might not otherwise be supplied. The committee believes this action will allow the industry to service more non-traditional markets and may be a way to increase fresh market shipments and to develop new markets.

The committee also discussed the limits on the amount of fruit growers can ship during the season. Several different combinations of shipment totals were discussed. The committee determined that the limit of 150 boxes of each variety per shipment was still appropriate because it allowed the grower to ship a sufficient amount of fruit to make the exemption cost effective, but prevented too much fruit from entering market channels exempt from order requirements. However, the committee did agree that by raising the total amount of citrus a grower can ship during the season, the grower may be able to service more markets and sell more fruit. The committee continues to support the increase in the volume limit from 1,500 boxes to 3,000 boxes per variety under the exemption. This amount provides additional volume for the grower while limiting the amount of fruit that can be shipped under the exemption. Maintaining shipments at these levels will help keep this fruit in non-competitive outlets.

With the potential for additional fruit entering the market under the exemption, ensuring compliance with the provisions of the exemption and reducing the chances of tree run fruit getting into regular market channels is an important consideration. As a means of tracking the fruit and ensuring compliance, the committee decided that each container of tree run fruit should contain the name and address of the grower. Because tree run fruit can be shipped in a variety of containers, the committee thought requiring a label on the containers themselves may be impractical. For some containers, such as a cardboard box, having the name and address printed on the outside of the container would not be problematic. However, on other containers, such as field boxes, plastic boxes, or mesh bags, it can be difficult to print the name and address or affix a label. Therefore, the committee agreed that placing the name and address inside the container provides a means for identifying the owner of the fruit with the least amount of difficulty.

Consequently, for the reasons discussed, the committee voted unanimously to extend the tree run exemption for the 2003–04 season, raise the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety, and require that growers identify each container with their name and address. The exemption is extended for the 2003–04 season only, and will expire on July 31, 2004. At the end of the season, the committee will review all available information and decide whether the exemption should be continued on a permanent basis.

Growers will continue to be required to apply to the committee, on the ''Grower Tree Run Certificate Application'' form provided by the committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form the grower must provide their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced in the specified grove. The grower must also certify that the fruit to be shipped comes from the grove owned by the grower applicant. The application form will be submitted to the committee manager and reviewed for completeness and accuracy. The manager will also verify the information provided. After the application has been reviewed, the manager will notify the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for exemption and begins shipping fruit, a ''Report of Shipments Under Grower Tree Run Certificate'' form, also provided by the committee, must be completed for each shipment. On this form, the grower will provide the location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit, along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the committee. This report will enable the committee to maintain compliance and gather data, which will be used to determine the effectiveness of the exemption. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

This rule does not affect the provisions that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specified conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including citrus, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the citrus import regulations as a result of this action.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of Florida citrus in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and committee data, the average annual f.o.b. price for fresh Florida oranges, grapefruit, tangerines, and tangelos during the 2002–03 season was approximately $8.55 per 4/5 bushel carton, and total fresh shipments for the 2002–03 season were around 49.3 million cartons of oranges, grapefruit, tangerines, and tangelos. Approximately 20 handlers handled 65 percent of Florida's citrus shipments in 2002–03. Considering the average f.o.b. price, at least 55 percent of the orange, grapefruit, tangerine, and tangelo handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida citrus handlers may be classified as small entities. The majority of Florida citrus producers may also be classified as small entities.

This rule continues in effect an extension in the provisions of § 905.149 of the rules and regulations under the order for one more season. This rule exempts shipments of small quantities of tree run citrus from the grade, size, and assessment requirements for the 2003–04 season. This rule also continues in effect an increase in the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety during the season and requires growers to identify their containers with their name and address. Growers must receive approval from the committee before they can use this exemption. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a recent study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from $1.71 per box for processed oranges to $2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately $6.50 per box, for grapefruit the charge is approximately $5.75 per box, and for tangerines the charge can be as high at $9 per box. In a time when grower returns are weak, sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether.

This rule will not impose any additional costs on the grower, but have the opposite effect, providing growers the opportunity to reduce the costs associated with having fruit handled by a packinghouse. This action allows growers to ship small quantities of their tree run citrus directly into interstate commerce exempt from the order's grade, size, and assessment requirements and their related costs. With this action, growers will be able to reduce handling costs and use those savings toward developing additional markets not serviced by packed fruit. This rule will benefit all growers regardless of size, but it is expected to have a particular benefit for the small grower.

The committee considered alternatives to this action. One possible alternative was not extending the exemption for another season. However, the committee believes the exemption does provide other possible outlets for fruit and may help increase returns to growers, so this alternative was rejected. Another alternative considered was removing the limit on the total amount of citrus a grower could ship during the season. Committee members had concerns about allowing this exemption without some limit on total shipments. The committee agreed that an increase in the limit would provide additional opportunities for growers without causing any market disruption or making it more difficult to keep tree run fruit in noncompetitive outlets. Therefore, this alternative was also rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on September 3, 2003 (68 FR 52325). Copies of the rule were mailed by the committee's staff to all committee members and citrus handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period, which ended November 3, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 52325, September 3, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 68 FR 52325 on September 3, 2003, is adopted as a final rule without change.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30600 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 264b

[Docket No. R–1174]

Rules Regarding Foreign Gifts and Decorations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising its Rules Regarding Foreign Gifts and Decorations, which govern the acceptance, retention, and disposition of gifts and decorations from foreign governments by Board employees under the Foreign Gifts and Decorations Act of 1966, as amended (''Act''). The revisions reorganize and update the language of the existing rules, update the internal procedures of the Office of the Secretary, augment practices for complying with the Act, and delegate certain approval and enforcement authority. The substantive requirements for compliance with the rules remain unchanged.

EFFECTIVE DATE: The final rule is effective January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Deputy Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC at (202) 452–3711. For users of Telecommunications Device for the Deaf (TDD) *only,* contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978, amended the Foreign Gifts and Decorations Act of 1966 (5 U.S.C. 7342), making substantial changes to the law governing acceptance and retention of gifts and decorations from foreign governments. In 1979, the Board implemented these changes by adopting its Rules Regarding Foreign Gifts and Decorations (12 CFR part 264b).

The final rule updates the organization and language of the existing rules to make them easier to understand. In addition, it augments practices for complying with the Act, which include aggregating the value of all tangible gifts presented at or marking an event for purposes of applying the minimal-value threshold ($285 or less, adjusted every three years for inflation), but not aggregating the total value of tangible gifts received at two or more events, even if on the same day. The revisions also clarify that gifts of travel or travel expenses of more than minimal value for travel taking place entirely outside the United States are accepted in accordance with specific instructions of the Board if preapproved by the Administrative Governor or the Administrative Governor's designee. Gifts of travel or travel expenses accepted without such prior approval must be reported to the Office of the Secretary and must receive after-the-fact approval, or the Board employee is personally liable to repay the expenses.

The final rule also delegates to the Administrative Governor (or designee) the authority to approve acceptance and retention of decorations and to report, after consultation with the General Counsel, to the Attorney General cases in which there is reason to believe that a Board employee has violated the Act. The Office of the Secretary is delegated the authority to approve and retain tangible gifts of more than minimal value for official use.

Regulatory Flexibility Act

This final rule relates solely to the internal management, operations, and personnel of the Board and, therefore, is exempt from notice and comment under 5 U.S.C. 533(a)(2). Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Board to use ''plain language'' in all rules published in the **Federal Register** after January 1, 2000. The Board believes that the final rule is simple and straightforward and is consistent with this ''plain language'' directive.

List of Subjects in 12 CFR Part 264b

Decorations, medals, awards, Foreign relations, Government employees, Government property.

Authority and Issuance

■ For the reasons set forth in the preamble, revise part 264b of title 12 of the Code of Federal Regulations to read as follows:

PART 264b—RULES REGARDING FOREIGN GIFTS AND DECORATIONS

Sec.

Authority: 5 U.S.C. 552, 7342; 12 U.S.C. 248(i).

§ 264b.1 Purpose and scope.

These rules govern when Board employees, their spouses, and their dependents may accept and retain gifts and decorations from foreign governments under the Foreign Gifts and Decorations Act of 1966, as amended (5 U.S.C. 7342) (''Act'').

§ 264b.2 Definitions.

When used in this part, the following terms have the meanings indicated:

(a) *Board employees* means:

(1) Members of the Board of Governors of the Federal Reserve System (''Board''), officers, and other employees of the Board, including experts or consultants while employed by, and acting on behalf of, the Board; and

(2) Spouses (unless separated) or dependents (within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152)) of such persons.

(b) *Foreign government* means:

(1) Any unit of foreign governmental authority, including any foreign national, State, local, or municipal government;

(2) Any international or multinational organization whose membership is composed of any unit of foreign government as described in paragraph (b)(1) of this section; and

(3) Any agent or representative of any such unit or organization, while acting as such.

(c) *Gift* means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government.

(d) *Decoration* means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government.

(e) *Minimal value* means retail value in the United States at the time of acceptance of $285 or less as of January 1, 2002, and at 3-year intervals thereafter, as redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period.

(f) *Administrative Governor* means the Board member serving as the Administrative Governor and includes persons designated by the Administrative Governor to exercise the authority granted under this part in the governor's absence.

§ 264b.3 Restrictions on acceptance of gifts and decorations.

(a) Board employees are prohibited from requesting or otherwise encouraging the tender of a gift or decoration from a foreign government.

(b) Board employees are prohibited from accepting a gift or decoration from a foreign government, except in accordance with this part.

§ 264b.4 Gifts of minimal value.

(a) Board employees may accept and retain a gift of minimal value tendered and received as a souvenir or mark of courtesy. If more than one tangible gift is presented at or marks an event, the value of all such gifts must not exceed ''minimal value.'' If tangible gifts are presented at or mark separate events, their value must not exceed ''minimal value'' for each event, but may exceed ''minimal value'' for all events, even if the events occur on the same day.

(b) Board employees may determine at the time a gift is offered whether it is of minimal value, or they may submit an accepted gift as soon as practicable to the Office of the Secretary for valuation.

(c) Disagreements over whether a gift is of minimal value will be resolved by an independent appraisal under procedures established by the Office of the Secretary.

§ 264b.5 Gifts of more than minimal value.

(a) *Educational scholarships or medical treatment.* Board employees may accept and retain gifts of more than minimal value when such gifts are in the nature of an educational scholarship or medical treatment.

(b) *Travel or travel expenses.* Board employees may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if appropriate, consistent with the interests of the United States, and permitted by the Board under paragraph (b)(1) or (b)(2) of this section.

(1) Board employees may accept gifts of travel or expenses for travel under paragraph (b) of this section in accordance with specific instructions of the Board, as evidenced by the prior approval of the Administrative Governor. Board employees must request prior approval under procedures established by the Office of the Secretary.

(2) Board employees may accept gifts of travel or expenses for travel under paragraph (b) of this section without the prior approval of the Administrative Governor if such expenses are reported under § 264b.6(b) and the Administrative Governor approves their acceptance after the fact. Board employees must personally repay gifts of travel or expenses for travel of more than minimal value that are not approved by the Administrative Governor.

(c) *Other gifts.* (1) Board employees may typically regard the refusal of gifts of more than minimal value at the inception (when offered or received without a prior offer) as consistent with the interests and general policy of the United States.

(2) Board employees may accept gifts of more than minimal value when it appears that refusal would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. Tangible gifts are considered to have been accepted on behalf of the United States and become the property of the United States on acceptance. Accordingly, they must be deposited and documented in accordance with § 264b.6(a) and can only be returned or otherwise processed by the Office of the Secretary under § 264b.8.

§ 264b.6 Requirements for gifts of more than minimal value.

(a) *Tangible gifts.* Board employees must deposit tangible gifts of more than minimal value with the Office of the Secretary within 60 days of acceptance and assist in preparing a statement that contains the following information for each gift:

(1) The name and position of the Board employee;

(2) A brief description of the gift and the circumstances justifying acceptance;

(3) The identity, if known, of the foreign government and the name and position of the individual who presented the gift;

(4) The date of acceptance of the gift;

(5) The estimated value in the United States of the gift at the time of acceptance; and

(6) The disposition or current location of the gift.

(b) *Travel or travel expenses without prior approval.* Board employees who accept a gift of travel or expenses for travel under § 264b.5(b)(2) without the prior approval of the Administrative Governor must submit a report to the Office of the Secretary within 30 days of acceptance that contains the following information:

(1) The name and position of the Board employee;

(2) A brief description of the gift, including its estimated value, and the circumstances justifying acceptance; and

(3) The identity, if known, of the foreign government and the name and position of the individual who presented the gift.

(c) *Reports to the Secretary of State.* The Office of the Secretary must report the information contained in the statements described in paragraphs (a) and (b) of this section to the Secretary of State, who must publish in the **Federal Register** not later than January 31 of each year a comprehensive listing of all such statements for gifts of more than minimal value that were received by federal employees during the preceding year.

§ 264b.7 Decorations.

(a) Board employees may accept, retain, and wear a decoration tendered or awarded by a foreign government in recognition of active field service in time of combat operations or for other outstanding or unusually meritorious performance, subject to the approval of the Administrative Governor. Requests for approval must be submitted to the Office of the Secretary and contain a statement of the circumstances surrounding the award and include any accompanying documentation. The recipient may retain the decoration pending action on the request.

(b) Decorations accepted by Board employees without the approval of the Administrative Governor are considered to have been accepted on behalf of the United States and must be deposited within 60 days of the decoration's acceptance with the Office of the Secretary for disposition or retention under § 264b.8.

§ 264b.8 Disposition or retention of gifts and decorations deposited with the Office of the Secretary.

(a) The Office of the Secretary may dispose of gifts and decorations deposited under §§ 264b.6(a) and 264b.7(b) by returning them to the donors or by handling them in accordance with instructions from the General Services Administration under applicable law.

(b) The Office of the Secretary may approve and retain gifts and decorations deposited under §§ 264b.6(a) and 264b.7(b) for official use. The Office of the Secretary must dispose of a gift within 30 days of the termination of its official use in accordance with instructions from the General Services Administration under applicable law.

§ 264b.9 Enforcement.

(a) The Administrative Governor, after consultation with the General Counsel, must report to the Attorney General cases in which there is reason to believe that a Board employee has violated the Act.

(b) The Attorney General may bring a civil action in any district court of the United States against a Board employee who knowingly solicits or accepts a gift from a foreign government in violation of the Act, or who fails to deposit or report such a gift as required by the Act. The court may assess a maximum penalty of the retail value of a gift improperly solicited or received plus $5,000.

§ 264b.10 Certain grants excluded.

This part does not apply to grants and other forms of assistance to which § 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies. *See* 22 U.S.C. 2458a.

By order of the Board of Governors of the Federal Reserve System, December 4, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–30632 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The supplemental ANADA provides for use of oxytetracycline hydrochloride soluble powder in honeybees for the control and treatment of foulbrood, and in swine drinking water with a reduction in preslaughter withdrawal time to zero days.

DATES: This rule is effective December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV 104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64503, filed a supplement to ANADA 200–247 that provides for use of Oxytetracycline HCl Soluble Powder-343 for making medicated drinking water for the treatment of various bacterial diseases of livestock. The supplemental ANADA provides for use of oxytetracycline hydrochloride soluble powder in honeybees for the control and treatment of foulbrood, and in swine drinking water with a reduction in preslaughter withdrawal time to zero days. A new container size, a 4.78-ounce packet, is also being approved. The supplemental ANADA is approved as of November 12, 2003, and the regulations are amended in 21 CFR 520.1660d to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1660d is amended in the third sentence in paragraph (d)(1)(iii)(C) by removing ''withdraw 5 days prior to slaughter those products sponsored by No. 059130 and zero days those products sponsored by No. 000069'' and by adding in its place ''withdraw zero days prior to slaughter those products sponsored by Nos. 000069 and 059130'' and by revising paragraphs (a)(7) and (b)(5) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

(a) * * *

* * * * *

(7) Each 1.32 grams of powder contains 1 gram of OTC HCl (packet: 4.78 and 9.6 oz.; pails: 2 and 5 lb); each 18.1 grams of powder contains 1 gram of OTC HCl (packet: 6.4 oz.; pails: 2 and 5 lb).

* * * * *

(b) * * *

* * * * *

(5) No. 059130 for use of OTC HCl concentration in paragraph (a)(7) of this section in chickens, turkeys, swine, cattle, sheep, and honeybees.

* * * * *

Dated: November 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–30642 Filed 12–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Injectable or Implantable Dosage Form New Animal Drugs; Meloxicam

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Boehringer Ingelheim Vetmedica, Inc. The NADA provides for use of meloxicam injectable solution in dogs for the control of pain and inflammation associated with osteoarthritis.

DATES: This rule is effective December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *mberson@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506–2002, filed NADA 141–219 that provides for use of METACAM (meloxicam) Injectable Solution in dogs for the control of pain and inflammation associated with osteoarthritis. The NADA is approved as of November 12, 2003, and the regulations are amended

in part 522 (21 CFR part 522) by adding § 522.1367 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning November 12, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.1367 is added to read as follows:

§ 522.1367 Meloxicam.

(a) *Specifications.* Each milliliter of solution contains 5.0 milligrams (mg) meloxicam.

(b) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer 0.2 mg/kilogram (kg) body weight by intravenous or subcutaneous injection on the first day of treatment. For treatment after day 1, administer meloxicam suspension orally at 0.1 mg/kg body weight once daily as in § 520.1350(c) of this chapter.

(2) *Indications for use.* For the control of pain and inflammation associated with osteoarthritis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 21, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–30643 Filed 12–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–095–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with one exception, amendments to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendments we are approving concern blasting, and amend the Code of State Regulations (CSR) by adding the Surface Mining Blasting Rule, and amend the Code of West Virginia (W. Va. Code) blasting provisions as contained in Enrolled Senate Bill 689. The amendments are intended to improve the operational efficiency of the West Virginia program, and to render the West Virginia program consistent with SMCRA and the Federal regulations.

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, Internet address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated October 30, 2000, West Virginia sent us an amendment to its program (Administrative Record Number WV–1187) under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment added to the West Virginia regulations new Title 199, Series 1, entitled Surface Mining Blasting Rule. These regulations consist of some new blasting provisions and many blasting provisions that were relocated or derived from previously-approved West Virginia blasting provisions. The amendment is intended to revise the State's blasting rules to implement statutory revisions concerning blasting that we approved, with certain exceptions, on November 12, 1999 (64 FR 61507) (Administrative Record Number WV–1143).

We announced receipt of the proposed amendment in the December 5, 2000, **Federal Register** (65 FR 75889) (Administrative Record Number WV–1190). In the same document, we opened the public comment and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a hearing or a meeting because no one requested one. The public comment period ended on January 4, 2001. We received comments from one Federal agency and one professional organization.

By letter dated November 28, 2001 (Administrative Record Number WV–

1258), West Virginia sent us another proposed amendment to its blasting provisions. The proposed amendment consists of several changes to blasting provisions in the W. Va. Code as contained in Enrolled Senate Bill 689, and changes to the Surface Mining Blasting Rule at CSR 199–1. Senate Bill 689 amends preblast survey requirements, site-specific blasting design requirements, and provisions concerning liability and civil penalties in the event of property damage. We note that the State submitted two versions of CSR 199–1. One version contained underlines of most of the proposed additions and strikethroughs of most of the language proposed for deletion. The second version of CSR 199–1 submitted by the State was a ''clean'' version with no underlines or strikethroughs of the proposed changes. It was this ''clean'' version, with sixteen additional revisions, that was adopted by the State Legislature. We announced receipt of the proposed amendment that the State sent us on November 28, 2001, including both versions of CSR 199–1, in the January 31, 2002, **Federal Register** (67 FR 4689) (Administrative Record Number WV–1267). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period ended on March 4, 2002. We did not hold a hearing or meeting because no one requested one. We received comments from four Federal agencies.

The statutory revisions in Senate Bill 689 were also intended to address the required program amendments codified at 30 CFR 948.16(kkkk) and (llll) concerning preblast survey requirements, and (mmmm) concerning blasting requirements. To expedite our review of the State's responses to those required amendments, we separated those proposed changes from the submittal and published our approval of those provisions (W.Va. Code sections 22–3–13a(g) and 13a(j)(2), and 22–3–30a(a)) in the May 1, 2002, **Federal Register** (67 FR 21904, 21920) (Administrative Record Number WV–1300).

III. OSM's Findings

Following are findings we made concerning the amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendments with one exception noted below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes, or recodification changes resulting from these amendments and are approved here without discussion.

A. Revisions to the West Virginia Program That Are Substantively Identical to the Corresponding Provisions of SMCRA and the Federal Regulations, or That Were Previously Approved by OSM and Merely Copied to CSR 199–1, and Do Not Require Specific Findings

Code of West Virginia (W. Va. Code)

22–3–13a(a)(3) Preblast survey requirements (30 CFR 817.62(a))

Code of State Regulations (CSR)

199–1–1 General (30 CFR 816/817.61(a) and 850.1)
199–1–2.9 Definition of ''blaster,'' in conjunction with CSR 38–2–3.1 (30 CFR 850.5)
199–1–2.25 Definition of ''explosives,'' previously approved (30 CFR 816/817.61)
199–1–3.1 Blasting; General requirements (30 CFR 816/817.61(a) and (c)(1))
199–1–3.5 Blast record; previously approved (30 CFR 816/817.68)
199–1–3.6.a Blasting procedures (30 CFR 816/817.64(a),(2),(3); 816/817.67(a))
199–1–3.6.b Safety precautions (30 CFR 816/817.66(b),(c); 816/817.61(c)(3))
199–1–3.6.c Airblast limits (30 CFR 816/817.67(b))
199–1–3.6.d Flyrock (30 CFR 816/817.67(c))
199–1–3.6.e Access to blast area (30 CFR 816/817.66(c))
199–1–3.6.f Blast design (30 CFR 816/817.61(d))
199–1–3.6.g Underground mine (30 CFR 780.13(c))
199–1–3.6.h Scaled distance formulas (30 CFR 816/817.67(d)(2)(i), (d)(3))
199–1–3.6.j Seismograph recording; previously approved (30 CFR 816/817.67(d)(6))
199–1–3.6.k Maximum allowable ground vibration; previously approved (30 CFR 816/817.67(d)(5))
199–1–3.6.l Maximum airblast and ground vibration standards; previously approved (30 CFR 816/817.67(e))
199–1–3.7.b Blasting control for other structures; previously approved (30 CFR 816/817.67(d)(1))
199–1–4.11 Blasting crew; previously approved (30 CFR 850.13(a)(2))

Because these State provisions have been approved previously or contain language that is substantively identical to the corresponding Federal requirements, we find that they are no less effective than those corresponding Federal requirements and can be approved without further discussion.

B. Revisions to West Virginia's Code and Regulations That Require Specific Findings

Code of West Virginia (W. Va. Code)

1. 22–3–13a(g) Preblast survey requirements. This provision provides that pre-blast surveys shall be submitted to the Office of Explosives and Blasting (Office) at least 15 days prior to the start of any ''production blasting.'' The provision is amended by adding the following sentence: ''Provided, That once all required surveys have been reviewed and accepted by the Office of Explosives and Blasting, blasting may commence sooner than fifteen days after submittal.'' We find that the amendment does not render the provision less effective than the Federal regulations at 30 CFR 816/817.62(d), which require that such surveys be promptly submitted to the regulatory authority, and can be approved.

We note that in our November 12, 1999, approval of this provision (64 FR 61507, 61510–61511) we approved W. Va. Code 22–3–13a(g) with the understanding that, as explained by the West Virginia Department of Environmental Protection (WVDEP) at that time, the time limits for submittal of pre-blast surveys at CSR 38–2–6.8.a.4. continue to apply to all blasting other than ''production blasting.'' The State's submittal of the Surface Mining Blasting Rule at CSR 199–1–3.8.a, concerning pre-blast survey, provides that surveys, waivers or affidavits for each dwelling or structure within the pre-blast survey area shall be completed and submitted to the Office of Explosives and Blasting at least 15 days before any blasting may occur. The Federal regulations at 30 CFR 816/817.62(e) provide that surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. In Finding B.10 below, on CSR 199–1–3.8, we conclude that the State's 15-day requirement does not render the State provision less effective than 30 CFR 816/817.62(e). Likewise, W.Va. Code 22–3–13a(g) does not conflict with the requirement that surveys requested more than 10 days before the planned initiation of blasting be completed by the operator before the initiation of blasting. Therefore, we find that the provisions are not inconsistent with the Federal preblast survey requirements, and we are approving the amendments to W. Va. Code 22–3–13a(g).

2. 22–3–22a(e) Blasting restrictions. This provision concerns blasting within 1,000 feet of a protected structure. This subsection was amended by adding the words ''identified,'' and ''notification area,'' which are intended to clarify the intent of the last sentence of this provision. These changes were made in response to our recommendations when we initially approved these blasting provisions on November 12, 1999 (64 FR 61507, 61511). As amended, the sentence provides that in the development of a site-specific blasting plan, consideration shall be given, but not limited to ''* * * the concerns of the owner or occupant living in the protected structures identified in the blasting schedule notification area.'' We find that the amendment does not render the provision inconsistent with SMCRA section 515(b)(15)(C), which concerns the prevention of injury to persons and damage to property, and can be approved. We note, however, that in our November 12, 1999, approval of this provision (64 FR at 61511) we approved W. Va. Code 22–3–22a(e) only to the extent that all blast designs, site specific and generic, as explained by WVDEP at that time, comply with the blast design requirements at CSR 38–2–6.5.g.3. These provisions are now located at CSR 199–1–3.6.f.3. Therefore, W.Va. Code 22–3–22a(e) remains approved with the understanding that all blast designs, site specific and generic, comply with the blast design requirements at CSR 199–1–3.6.f.3.

3. 22–3–22a(f) Waiver of the blasting prohibitions. This subsection was amended by deleting the words ''or the site specific restriction within one thousand feet in writing'' in two locations. The effect of this deletion means that a waiver of the site-specific blast design cannot be obtained within ''one thousand feet'' of a protected structure. Subsection 22–3–22a(e) provides that blasting within 1,000 feet of a protected structure shall have a site-specific blast design approved by the Office of Explosives and Blasting. Deletion of the words ''or the site specific restriction within one thousand feet in writing'' from the waiver provisions of subsection 22–3–22a(f) means that although an owner or occupant may waive the blasting prohibition within 300 feet of a protected structure, the permittee must still provide a site-specific blast design to the Office for all blasting within 1,000 feet of a protected structure. We find that the amendments to this provision do not render the West Virginia program less effective than the Federal regulations at 30 CFR 816/817.61(d) and can be approved.

4. 22–3–30a(b) Blasting requirements. This subsection requires penalties to be imposed for each permit area or contiguous permit areas where blasting was not in compliance with the regulations governing blasting parameters and resulted in property damage to a protected structure. The subsection was amended by adding language to the first sentence that establishes the limits to which the penalties at subsection 22–3–30a(b) will apply. The words ''at a surface coal mine operation as defined by the provisions of subdivision (2), subsection (a), section thirteen-a of this article'' were added following the word ''blast'' and before the word ''was.'' In effect, the penalties identified at subsection 22–3–30a(b) apply to surface coal mining operations, except those that are less than 200 acres in a single permitted area or less than 300 acres of contiguous or nearly contiguous area of two or more permitted areas. This revision is intended to ensure that coal operators with relatively small mining operations will not be subject to the penalties authorized by subsection 22–3–30a(b) (see Administrative Record Number WV–1376).

By its terms, 22–3–30a(b) pertains only to blasting violations that result in property damage to protected structures. These punitive penalties are in addition to the civil penalties that will be assessed for blasting violations resulting in property damage under CSR 199–1–8.6, 8.7, and 8.8 (Administrative Record Number WV–1376). These penalties will not apply to blasting violations caused by small surface mining operations as described in W. Va. Code 22–3–13a(1) or to coal extraction by underground coal mining methods. Thus, the supplemental penalties imposed by the State for these blasting violations are not inconsistent with the Federal penalty requirements at section 518 of SMCRA. Furthermore, all blasting violations, regardless of whether they cause damage to protected structures, including damage to water wells, will be subject to the civil penalty assessment requirements set forth in W. Va. Code 22–3–17 and CSR 199–1–8.6, 8.7, and 8.8 (*see* 64 FR at 61513–61514; November 12, 1999). Therefore, we find that the new language does not render the West Virginia program inconsistent with SMCRA at section 518, or the Federal regulations at 30 CFR part 845, and can be approved.

5. 22–3–30a(c) Prohibition against imposing penalties for violations that are merely administrative in nature. This provision was amended by adding language to clarify what penalties may not be imposed on an operator for any violation identified in 22–3–30a(b) that is merely administrative in nature. As amended, this provision provides as follows:

> (c) Notwithstanding the provisions of subsections (a) and (b) of this section, the division [Department] of environmental protection may not impose penalties, as provided for in subsection (b) of this section, on an operator for the violation of any rule identified in subsection (b) of this section that is merely administrative in nature.

We note that W. Va. Code 22–3–30a concerns liability and requires the imposition of punitive penalties in the event of property damage. As discussed above, all blasting related violations will be assessed civil penalties in accordance with W.Va. Code 22–3–17 and CSR 199–1–8.6, 8.7, and 8.8. This would also include blasting violations resulting in property damage that are administrative in nature. Therefore, we find that this provision is not inconsistent with SMCRA section 518(a) concerning penalties, and can be approved.

6. 22–3–30a(e) Blasting within 300 feet of a protected structure. This provision has been amended by adding language concerning site-specific blast designs. As amended, this subsection provides that where an inspection establishes that production blasting is done within 300 feet of a protected structure, without an approved site-specific blast design or not in accordance with an approved site-specific blast design for production blasting within 1,000 feet of a protected structure or within 100 feet of a cemetery, the monetary penalties and revocation, as set out in W. Va. Code 22–3–30a(b), apply. This means that production blasting that is done within 300 feet of a protected structure, even if it was done in accordance with a waiver or a site-specific blast design, and causes property damage will be assessed a supplemental penalty in accordance with W. Va. Code 22–3–30a(b). In addition, all blasting related violations that cause or do not cause property damage to protected structures will be subject to the civil penalty requirements of W. Va. Code 22–3–17 and CSR 199–1–8.6, 8.7, and 8.8. Therefore, we find that subsection 22–3–30a(e), as amended, is no less stringent than SMCRA section 518 and not inconsistent with 30 CFR part 845, and can be approved.

7. 22–3–30a(f) Penalties assessed and collected. This provision is amended by adding a citation to clarify that the penalties and liabilities that must be assessed are those authorized by subsection 22–3–30a(b). As

amended, subsection 22–3–30a(f) provides that all penalties and liabilities as set forth in subsection 22–3–30a(b) shall be assessed by the Secretary of the WVDEP and deposited with the treasurer of the State of West Virginia in the ''general school fund.'' In our previous finding concerning this provision (November 12, 1999; 64 FR at 61514), we did not approve subsection 22–3–30a(f) because of the requirement that the fees collected would be deposited in the ''general school fund,'' rather than the ''special reclamation fund.''

The approved State program at W. Va. Code 22–3–17(d)(2) currently requires that civil penalties be deposited into the State's alternative bonding system, known as the ''special reclamation fund.'' Under 22–3–30a(f), penalties collected from blasting violations that resulted in property damage to protected structures will be deposited into the general school fund. We note that W. Va. Code 22–3–30a(f) only concerns punitive penalty assessments relating to property damage violations due to blasting that supplement the State's existing civil penalty assessments at CSR 38–2–20. All blasting related violations will still be assessed under CSR 199–1–8.6, 8.7, and 8.8 and the monies collected will be deposited in the Special Reclamation Fund. Therefore, the Special Reclamation Fund will continue to receive funds from civil penalty assessments under CSR 199–1–8.6, 8.7, and 8.8, while the general school fund will receive funds from the supplemental penalties assessed under 22–3–30a(b) and (f). Given that existing funds will not be diverted from the Special Reclamation Fund, we find that this provision does not render the West Virginia program inconsistent with SMCRA section 518 concerning penalties and section 509(c) concerning alternative bonding systems, and can be approved.

8. 22–3–30a(h) Applicability. This provision is amended to clarify that the provisions of section 22–3–30a do not apply to the extraction of minerals by underground mining methods, provided that nothing contained in section 22–3–30a may be construed to exempt any coal mining operation from the general performance standards as contained in W. Va. Code 22–3–13 and any rules promulgated pursuant thereto. Blasting associated with surface impacts and surface operations incidental to underground coal mining would be subject to the State's blasting requirements, including the supplemental and civil penalty assessment provisions at 22–3–30a(b), subject to the acreage limitations of that same subsection, and CSR 199–1–8.6, 8.7, and 8.8. We find that as amended, this provision is consistent with SMCRA section 518 and 30 CFR part 845, pertaining to penalty assessments, and can be approved.

Code of State Regulations (CSR)

9. CSR 199–1–2 Definitions. CSR 199–1–2 contains definitions, which are discussed next. Except for the definitions at CSR 199–1–2.15, 2.26, 2.30, 2.32, 2.36, and 2.38, the terms that are defined herein have no specific Federal counterparts.

199–1–2.1 Definition of ''active blasting experience.'' Active blasting experience means experience gained by a person who has worked on a blasting crew, or supervised a blasting crew. Two hundred forty (240) working days constitutes one year of experience. Experience may only be gained by ''first hand'' participation in activities associated with the storing, handling, transportation and use of explosives or the immediate supervision of those activities within surface coal mined, and the surface areas of underground coal mines. Experience should be related to surface mine blasting; Provided, that other related blasting experience (quarrying operations, *etc.*) may be accepted by the Secretary on a case-by-case basis as qualifying experience. We find that this definition is not inconsistent with SMCRA section 515(b)(15)(D) or the Federal regulations at 30 CFR part 850 and can be approved.

199–1–2.2 defines ''air blast'' to mean an airborne shock wave resulting from the detonation of explosives. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.67(b) and can be approved.

199–1–2.3 defines ''adjuster'' to mean an outside party that is assigned to investigate, document, evaluate and make recommendations on a reported loss. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.4 defines ''arbitrator'' as an impartial individual appointed by the Office of Explosives and Blasting with the authority to settle the disputes between property owners and mine operators as they relate to allegations of blasting damage. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.5 defines ''arbitration'' as the referral of a dispute to a neutral or impartial person for total or partial determination. It is intended to be inexpensive, prompt and fair to the parties. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.6 Definition of ''blast.'' This provision was previously approved and was amended by adding the words ''planned or unplanned.'' As amended, ''blast'' is defined to mean any planned or unplanned detonation(s) of an explosive(s) being initiated simultaneously by a single source. We find that the definition is not inconsistent with the Federal regulations at 30 CFR 816/817.61 concerning the use of explosives and can be approved.

199–1–2.7 defines ''blast area'' to mean the area surrounding a blast site where flyrock could occur and which should be guarded against entry during the shot. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.66 and can be approved.

199–1–2.8 defines ''blast site'' to mean the area where explosive material is handled during loading including the perimeter formed by the loaded blast holes, and 50 feet in all directions from the collar of the outermost borehole or protected by a physical barrier to prevent access to the loaded blast holes. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.61 and can be approved.

199–1–2.10 defines ''blasting complaint'' to mean a communication to the Office from a member of the general public expressing concern, aggravation, fear or indications of blasting damage. A blasting complaint may or may not initially indicate damage. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.11 defines ''blasting claim'' to mean an allegation by the property owner of blasting related damage to property. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.12 defines ''blasting log'' as a written record containing all pertinent information about a specific blast as may be required by law or rule. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.68 and can be approved.

199–1–2.13 defines ''blasting vibration'' to mean the temporary ground movement produced by a blast that can vary in both intensity and duration. We find that this definition is

not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.67 and can be approved.

199–1–2.14 defines ''caused by blasting'' to mean that there is direct, consistent and conclusive evidence or information that the alleged damage was definitely caused by blasting from the mine site in question. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.15 defines ''certified blaster'' to mean a person who has taken and passed the examination described in CSR 199–1, and has been issued a certification card by the Office. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.61(c) and 850.5 and can be approved.

199–1–2.16 defines ''certified examiner/inspector'' to mean a person employed by the Office of Explosives and Blasting who administers training or examinations to applicants for certification as certified blasters, or who inspects surface mining operations and who has taken and passed the examination described in CSR 199–1. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations and can be approved.

199–1–2.17 defines ''chief'' to mean the Chief of the Office of Explosives and Blasting. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.18 defines ''claimant'' to mean the property owner who makes a blasting damage claim. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.19 defines ''claims administrator'' to mean the individual, firm or organization that manages the blasting damage claims program for the Office of Explosives and Blasting. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.20 defines ''construction blasting'' to mean blasting to develop haulroads, mine access roads, coal preparation plants, drainage structures, or underground coal mine sites and shall not include production blasting. We find that this definition is not inconsistent with SMCRA section 515(b)(15) or the Federal regulations at 30 CFR 816/817.61 and can be approved.

199–1–2.21 defines ''contiguous or nearly contiguous'' to mean surface mining operations that share a permit boundary or are within 100 feet of each other at the nearest point. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.22 defines ''detonation'' to mean a chemical reaction resulting in a rapid release of energy. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.23 defines ''Secretary'' to mean the Secretary of the Department of Environmental Protection or the Secretary's authorized agent. We find this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.24 defines ''Department'' to mean the Department of Environmental Protection. We find this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.26 defines ''fly rock'' to mean rock and/or earth propelled from the blast site through the air or along the ground by the force of the detonated explosives. We find that this definition is consistent with the Federal regulations at 30 CFR 816/817.67(c) regarding flyrock and can be approved.

199–1–2.27 defines ''loss value'' to mean the amount of money indicated in a given loss to include costs of repairs or replacement costs. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.28 defines ''not caused by blasting'' to mean that there is direct, consistent, and conclusive evidence or information that blasting from the mine site in question was definitely not at fault for the alleged property damage. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.29 defines ''office'' to mean the Office of Explosives and Blasting. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.30 Definition of ''operator.'' Operator means any person who is granted or who should obtain a permit to engage in any activity covered by W. Va. Code 22. Under W. Va. Code 22–3–3(o), ''operator'' is defined as follows:

> (o) ''Operator'' means any person who is granted or who should obtain a permit to engage in any activity covered by this article and any rule promulgated under this article and includes any person who engages in surface-mining or surface-mining and reclamation operations, or both. The term shall also be construed in a manner consistent with the federal program pursuant to the federal Surface-Mining Control and Reclamation Act of 1977, as amended.

The Federal definition at 30 CFR 701.5 defines ''operator'' as any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location. In accordance with the State's statutory definition of ''operator,'' the State's regulatory definition of ''operator'' must be construed in a manner consistent with the Federal definition of ''operator.'' We find, therefore, that the definition of ''operator'' at CSR 199–1–2.30, like W. Va. Code 22–3–3(o), is consistent with the Federal definition of ''operator'' at 30 CFR 701.5 and can be approved.

199–1–2.31 defines ''possible caused by blasting'' to mean the physical damage in question is not entirely consistent with blasting induced property damage, but that blasting cannot be ruled out as a casual factor. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.32 defines ''pre-blast survey'' to mean the written documentation of the existing condition of a given structure near an area where blasting is to be conducted. The purpose of the survey is to note the pre-blasting condition of the structure and note any observable defects or damage. While the proposed definition does not define near, we note that under W. Va. Code 22–3–13a(a), pre-blast surveys will be conducted for man-made dwellings or structures within ½ mile of the permitted area or under specified circumstances 7/10 mile of the proposed blasting site. We find that this definition, when read together with the statute, is consistent with the Federal regulations at 30 CFR 816/817.62 and can be approved.

199–1–2.33 defines ''probably caused by blasting'' to mean that there is physical damage present at the site in question that is entirely consistent with blasting induced property damage, and said damage can be attributed to a specific mine site and/or blast event(s). We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.34 defines ''probably not caused by blasting'' to mean that there is substantial, but not conclusive information that the alleged damage was caused by something other than blasting. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.35 defines ''production blasting'' to mean blasting that removes the overburden to expose underlying

coal seams and shall not include construction blasting. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.36 defines ''protected structure'' to mean any of the following structures that are situated outside the permit area: An occupied dwelling, a temporarily unoccupied dwelling which has been occupied within the past 90 days, a public building, a habitable building for commercial purposes, a school, a church, a community or institutional building, a public park or a water supply. This definition is used in the provisions at CSR 199–1–3.6 to provide protection from blasting damage for such protected structures. CSR 199–1–3.7 provides for the protection of structures in the vicinity of the blasting area which are not defined as protected structures. We find that this definition is not inconsistent with SMCRA or the Federal blasting regulations at 30 CFR 816/817.67 and can be approved.

199–1–2.37 defines ''supervised a blasting crew'' to mean that a person assumed responsibility for the conduct of a blasting crew(s) and that the crew(s) reported directly to that person. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

199–1–2.38 defines ''surface mine and surface area of underground mines'' to mean:

> all areas except underground workings surface mined or being surfaced mined, including adjacent areas ancillary to the operations, *i.e.*, preparation and processing plants, storage areas, shops, haulageways, roads, and trails, which are covered by the provisions of W. Va. Code 22–3–1 *et seq.*, and rules promulgated under that article.

Although it lacks commas setting apart the phrase, it is our understanding that this definition intends to exclude ''underground workings'' from the definition of ''surface mine and surface area of underground mines.'' Our finding that this definition is not inconsistent with SMCRA or the Federal definition of ''surface coal mining operations'' at 30 CFR 700.5 and can be approved is based upon that understanding of its intended meaning.

199–1–2.39 defines ''worked on a blasting crew'' to mean a person has first-hand experience in storing, handling, transporting, and using explosives, and has participated in the loading, connecting, and preparation of blast holes and has participated in detonating blasts. We find that this definition is not inconsistent with SMCRA or the Federal regulations and can be approved.

10. CSR 199–1–3 Blasting.

199–1–3.2.a Blasting plans. This subdivision is nearly identical to CSR 38–2–6.2 with the following changes. The first sentence was deleted, which required that each application for a permit, where blasting is anticipated, shall include a blasting plan. The deleted sentence was replaced by the following sentence: ''As required by statute, all surface mining operations that propose blasting shall include a blasting plan.'' The W. Va. Code 22–3–9(e) provides that each applicant for a surface-mining permit shall submit to the director as part of the permit application a blasting plan where explosives are to be used, which shall outline the procedures and standards by which the operator will meet the provisions of the blasting performance standards. We find that this new sentence is substantively identical to the Federal requirement at 30 CFR 780.13(a) concerning blasting plan, and that it can be approved.

Proposed 199–1–3.2.a was amended by deleting the phrase ''and the terms and conditions of the permit.'' We find that the deletion of this phrase does not render the provision less effective than the counterpart Federal provision at 30 CFR 780.13(a) and can be approved.

Proposed 199–1–3.2.a was amended to provide that the blasting plan would include methods to be applied in preventing, rather than controlling, the adverse effects of blasting. It was also amended by adding language that requires that blasting plans shall delineate the type of explosives and detonation equipment, the size, the timing and frequency of blasts, and the effect of geologic and topographic conditions on specific blasts. The new language also provides that blasting plans shall be designed to prevent injury to persons, prevent damage to public and private property outside the permit area, prevent adverse impacts on any underground mine, prevent change in the course, channel or availability of ground or surface water outside the permit area, and reduce dust outside the permit area. We find that this new language, which provides for the prevention of the adverse effects of blasting, is substantively identical to the requirements in SMCRA at section 515(b)(15)(C) with one exception. There is no Federal counterpart to the new provision at 199–1–3.2.a.5, which requires that blasting shall be designed to reduce dust outside the permit area. We find, however, that the provision is not inconsistent with the Federal requirements. Therefore, we find that the amendments to CSR 199–1–3.2.a can be approved.

199–1–3.2.b Review of blasting plans. This provision requires the Office of Explosives and Blasting to review blasting plans for administrative and technical completeness. There is no direct Federal counterpart to this provision. However, we find that the provision is not inconsistent with SMCRA section 515(b)(15) and the Federal regulations at 30 CFR 777.15 and 780.13(a) concerning completeness of a permit application and the blasting plan and can be approved.

199–1–3.2.c Inspection and monitoring procedure. This provision provides that each blasting plan shall contain an inspection and monitoring procedure to insure that blasting operations are conducted to eliminate, to the maximum extent technically feasible, adverse impacts to the surrounding environment and surrounding occupied dwellings. In addition, this subdivision provides that for all surface coal extraction operations that will include production blasting, the monitoring procedure shall include provisions for monitoring ground vibrations and air blast. This mandatory monitoring of production blasting is no less effective than the Federal requirements at 30 CFR 780.13(b), which requires each permit application to include a description of any system to be used to monitor compliance with blasting standards. We find that subdivision 3.2.c is consistent with the Federal requirements at 30 CFR 780.13(b) and can be approved.

199–1–3.2.d Review of blasting plans where a blasting related notice of violation (NOV) or cessation order (CO) have been issued. This provision requires that where a blasting related NOV or CO has been issued, the Office shall review the blasting plan within thirty (30) days of final disposition of the NOV or CO. This review will focus on the specific circumstances that led to the enforcement action. If necessary, the blasting plan will be modified to insure all precautions are being taken to safely conduct blasting operations. There is no direct Federal counterpart to this provision. However, we find that subdivision 3.2.d. is consistent with the Federal regulations at 30 CFR 816/817.61(d)(5), which states that the regulatory authority may require changes to the blast design, and can be approved.

199–1–3.3(a) Public notice of blasting operations. This provision is copied from CSR 38–2–6.3 and amended by adding a requirement that copies of the blasting schedule must also be distributed by Certified Mail to residents within seven tenths of a mile of the blasting sites for all surface coal

extraction permits larger than those defined in accordance with W. Va. Code 22–3–13a(a)(1). The State also revised an existing sentence providing that, unless blasting operations will occur on drainage structures and roads, [such] structures are exempt from measuring the notification area. In addition, the State added a requirement that a list of residents, utilities, and owners of man-made structures within the notification area shall be made part of the blasting plan, and shall be updated on an annual basis. Finally, the provision now requires publication and redistribution of the blasting schedule in a newspaper of general circulation in all the counties of the proposed [permit] area, rather than just in the county of the proposed permit area. We find that as amended, CSR 199–1–3.3(a) is consistent with and no less effective than the Federal regulations at 30 CFR 816.64(b) and can be approved.

199–1–3.4 Public notice of surface blasting incident to underground coal mining. This provision, which is nearly identical to the provision at CSR 38–2–6.3.b, is amended by adding the words ''and workplaces'' immediately following the word ''residents'' and before the words ''or owners.'' The effect of this amendment is to require that ''workplaces'' also receive the written notification of the proposed times and locations of the surface blasting operations incidental to underground coal mining operations. We find that the addition of the words ''and workplaces'' does not render the provision less effective than the Federal regulations at 30 CFR 817.64(a) and 816.79 and can be approved.

199–1–3.6.i Ground vibration. This provision was copied from CSR 38–2–6.5.j and amended by adding language to provide that seismographs used to demonstrate compliance with this subdivision must be shake-table calibrated annually. Also, the annual calibration certificate shall be kept filed with the blasting logs and seismograph records and made available for review as required by subdivision CSR 199–1–3.5.a. While there is no Federal counterpart to the new language, we find that it is not inconsistent with the Federal regulations concerning ground vibration at 30 CFR 816/817.67(d) and that CSR 199–1–3.6.i can be approved.

199–1–3.7.a Blasting control for other structures. This provision was copied from CSR 38–2–6.6.a, and amended by adding language to provide that if alternative maximum allowable limits on vibration are not included in the approved blast plan, the operator shall comply with the limits specified in paragraph 3.6.c.1, and subdivisions 3.6.h and 3.6.i. While there is no direct Federal counterpart to this provision, we find that it is consistent with the intent of 30 CFR 816/817.67(b) and (d) and can be approved.

199–1–3.8 Pre-blast survey. This provision is copied from CSR 38–2–6.8.a.2, and amended by adding the following language at the end of the provision:

> The pre-blast survey shall include a description of the water source and water delivery system. When the water supply is a well, the pre-blast survey shall include written documentation about the type of well, and where available, the well log and information about the depth, age, depth and type of casing, the static water level, flow and recharge data, the pump capacity, the name of the drilling contractor, and the source or sources of the information.

While the proposed language has no direct Federal counterpart, we find that it is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.62(c) and can be approved.

We must note that the State has not included specific procedures in its rules requiring operators, at least 30 days prior to the beginning of blasting operations, to notify residents or owners of structures in writing on how to request a preblast survey. However, this specific requirement is contained in W.Va. Code 22–3–13a(a), and it is our understanding that W.Va. Code 22–3–13a(a) continues to apply.

In addition, subsection 3.8 does not specifically require that copies of the preblast survey be promptly provided the person requesting the survey and the Secretary, and that the report be signed by the person conducting the preblast survey. However, W. Va. Code 22–3–13a(f)(18) specifically requires that the preblast survey include the signature of the person performing the survey. In addition, W. Va. Code 22–3–13a(g) provides that pre-blast surveys must be submitted to the Office of Explosives and Blasting, and that the Office shall provide a copy of the survey to the owner or occupant. It is our understanding that both W. Va. Code 22–3–13a(f)(18) and 22–3–13a(g) continue to apply. Our approval of subsection 3.8 is based upon those understandings.

199–1–3.8.a Pre-blast survey. This provision provides that surveys, waivers or affidavits for each dwelling or structure within the pre-blast survey area shall be completed and submitted to the Office of Explosives and Blasting at least 15 days before any blasting may occur, provided, that once all pre-blast surveys have been accepted by the Office, blasting may commence sooner than 15 days from submittal. There is no direct Federal counterpart to this provision. However, the Federal regulations at 30 CFR 816/817.62(e) provide that surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. While subdivision 199–1–3.8.a does not contain a specific counterpart to this language at 30 CFR 816/817.62(e), we find that CSR 199–1–3.8.a does not conflict with the Federal requirement. That is, the State provision in no way prohibits surveys being requested more than 10 days before the planned initiation of blasting. Furthermore, the State's existing regulations at CSR 38–2–6.8.a.4 provide that pre-blast surveys requested more than 10 days before the planned initiation of blasting must be completed before blasting begins. This ensures that any preblast survey that may be requested after the 15-day submission period will be completed before blasting commences. Therefore, we are approving this provision because, when read in conjunction with CSR 38–2–6.8.a.4, it is not inconsistent with 30 CFR 816/817.62(e).

199–1–3.8.a.1 Disagreement with pre-blast survey results. This provision provides that any person who disagrees with the results of the survey may submit a detailed description of the specific areas of disagreement, to the Office of Explosives and Blasting. The description of the areas of disagreement will be made a part of the pre-blast survey on file at the Office. We find that this new provision is no less effective than the Federal regulations at 30 CFR 816/817.62(d) and can be approved.

199–1–3.8.a.2 Structures/renovations after an initial pre-blast survey. This provision provides that if a structure is added to or renovated subsequent to a survey, a survey of such additions and/or renovations shall be performed upon request of the resident or owner. If a pre-blast survey was waived by the owner and was within the requisite area and the property was sold, the new owner may request a pre-blast survey from the operator. An owner within the requisite area may request, from the operator, a pre-blast survey on structures constructed after the original pre-blast survey. We find that this new provision is no less effective than the Federal regulations at 30 CFR 816/817.62(b) and can be approved.

199–1–3.9 Pre-blast surveyors. These new provisions set forth the qualifications for individuals and firms performing pre-blast surveys. There are no Federal counterparts to these provisions. We find, however, that these

provisions are not inconsistent with SMCRA section 515(b)(15) concerning the use of explosives, and the Federal regulations at 30 CFR 816/817.62 concerning pre-blasting surveys and can be approved.

199–1–3.10 Pre-blast survey review. This provision sets forth the requirements for submittal of pre-blast surveys to the Office of Explosives and Blasting and review of such surveys by the Office. The Federal regulations at 30 CFR 816/817.62, concerning pre-blasting survey, provide for pre-blast surveys, but the Federal regulations do not contain submittal and review procedures for pre-blast surveys. SMCRA at section 505(b) provides that any State statutory or regulatory provision which is in effect or may become effective after the enactment of SMCRA and that provides for control and regulation of surface mining and reclamation operations for which no provision is contained in SMCRA shall not be construed to be inconsistent with SMCRA. We find that this provision is not inconsistent with the Federal regulations at 30 CFR 816/817.62 concerning pre-blasting surveys and can be approved, to the extent described as follows:

Subdivision 3.10.b provides that the operator or his designee shall correct deficiencies within 30 days from receipt of notice of deficiencies. The Federal regulations at 30 CFR 816/817.62(e) provide that any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. The approved West Virginia program at CSR 38–2–6.8.a.4, concerning pre-blast survey, contains a counterpart to the Federal 10-day requirement at 30 CFR 816/817.62(e). Therefore, we are approving the provision at subdivision 3.10.b, because when read in conjunction with CSR 38–2–6.8.a.4, it is not inconsistent with 30 CFR 816/817.62(e).

Subdivision 3.10.d provides that all pre-blast surveys shall be confidential and only used for evaluating damage claims. This subdivision also provides that the Office of Explosives and Blasting shall develop a procedure for assuring surveys shall remain confidential. The Federal regulations, at 30 CFR 816/817.62, neither require nor preclude pre-blast surveys being confidential, nor do they limit their use to the evaluation of blasting damage claims or expressly specify a broader use of such surveys. While requiring such surveys to be kept confidential appears to pose no consistency problems with respect to Federal regulations, limiting the use of the surveys to damage claims warrants further discussion. The State's amendments at CSR 38–2–2.11 define blasting claim to mean an allegation by the property owner of blasting related damage to property. To the extent issuance of an enforcement action is necessary in resolving a blasting claim because of an operator's failure to repair, we do not find that these regulations preclude the use of a preblast survey to support actions such as the issuance of an NOV. Therefore, we are approving this provision with the understanding that the phrase ''only used for evaluating damage claims'' does not preclude the use of preblast surveys to support the issuance of NOVs, COs, civil penalties or other forms of alternative enforcement actions under the West Virginia Surface Coal Mining and Reclamation Act and its implementing regulations to achieve the repair of blasting damage and thus resolve a damage claim.

199–1–3.11 Additional protections. This new subsection provides that the Secretary of the WVDEP may prohibit blasting or may prescribe alternative distance, vibration and airblast limits on specific areas, on a case-by-case basis, where research establishes it is necessary, for the protection of public or private property, or the general welfare and safety of the public. While this provision has no direct Federal counterpart, we find that it is consistent with the Federal blasting provisions at 30 CFR 816/817.67(a), (b)(1)(ii), and (d)(5) and can be approved.

11. CSR 199–1–4 Certification of Blasters.

199–1–4.1.a Requirements for certification of blasters. This provision provides that in every surface mine and surface area of an underground mine when blasting operations are being conducted, a certified blaster shall be responsible for the storage, handling, transportation, and use of explosives for each and every blast, and for conducting the blasting operations in accordance with the blasting plans approved in a permit issued pursuant to W. Va. Code 22–3–1 *et seq.,* and the rules promulgated under that article. This provision also provides that each person responsible for blasting operations shall be certified. Each certified blaster shall have proof of certification either on his/her person or on file at the permit area during blasting operations. Certified blasters shall be familiar with the blasting plan and blasting related performance standards for the operation at which they are working. Where more than one certified blaster is working on a blast, the blaster who designed the blast shall supervise the loading operations and sign the blasting log. Furthermore, it provides that nothing in this rule modifies the statutory regulatory authority of the State Fire Marshal and the State Commission to regulate blasting and explosives. Similar provisions regarding certified blasters were previously approved at former W. Va. Code 22–4–3.01(A). We find that the revised provision is consistent with SMCRA sections 515(b)(15)(D) and 719 concerning blasters, and no less effective than the Federal regulations at 30 CFR 816/817.61(c)(1), (2) and (4)(i) and can be approved.

199–1–4.1.b Qualifications for certification. This provision provides that each applicant for certification shall have had at least one (1) year active blasting experience within the past three (3) years, and have demonstrated a working knowledge of and skills of the storage, handling, transportation, and use of explosives, and a knowledge of all State and Federal laws pertaining thereto, by successfully taking and passing the examination for certification required by CSR 199–1–4.3.b. Similar provisions regarding qualifications for certification were previously approved at W. Va. Administrative Regulations, Department of Mines, Chapter 22–4–3.01(A). Although it has no direct Federal counterpart, we find that the revised provision is consistent with the Federal regulations at 30 CFR 850.14(a)(2) and can be approved.

199–1–4.1.c Application for certification. This provision requires that prior to taking the examination for certification, a person must submit an application along with a fifty dollar ($50.00) application fee to the Office to take the examination on forms prescribed by the Secretary of the WVDEP. Upon receipt of an application for examination, the Secretary of the WVDEP shall, after determining that the applicant meets the experience requirements of subsection 199–1–4.1.b, notify the applicant of the date, time, and location of the scheduled examination. Similar provisions regarding application for certification were previously approved at former Chapter 22–4–6.02, except for the $50.00 fee. Although the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal regulations at 30 CFR 850.12(b) and can be approved.

199–1–4.2 Training. This provision provides that the Office of Explosives and Blasting will administer a training program to assist applicants for blaster certification or re-certification in acquiring the knowledge and skills required for certification. The training requirements shall include, at a

minimum, those subject areas set forth in subdivisions 199–1–4.3.b.1.A through 4.3.b.1.K. The Secretary of the WVDEP may establish a fee for training to cover costs to the Office. In lieu of completing the training program, the applicant for certification or re-certification who meets the experience requirements specified in subdivision 199–1–4.1.b, may complete a self-study course using the study guide and other materials available from the Office. Prior to certification, all applicants who choose to self-study will also be required to attend an Office two-hour training session addressing certified blasters' responsibilities and the disciplinary procedures contained in subsections 199–1–4.9 and 4.10. This training will be made available immediately prior to scheduled examinations when necessary. Similar training provisions were previously approved at former Chapter 22–4–3.01(B). In addition, the requirement to allow for completion of a self-study course in lieu of completing the training program was previously approved at CSR 38–2C–4 (61 FR 6511, 6528; February 21, 1996). While the revised provision has no direct Federal counterpart, we find that it is consistent with the requirements of SMCRA at section 515(b)(15)(D) and the Federal regulations at 30 CFR 850.13 and can be approved.

199–1–4.3.a Examinations for Certified Blaster Examiners/Inspectors. This provision provides that all persons employed by the Office, whose duties include training, examining, and certification of blasters and/or inspecting blasting operations shall be a certified examiner/inspector. Certification as an examiner/inspector does not constitute a surface mine blaster certification; however, a surface mine blaster certification is sufficient for certification as an examiner/inspector. The examination for certified examiner/inspector shall at a minimum test the applicant's knowledge as required by CSR 199–1–4.3.b. Similar provisions requiring certification of blaster examiners were previously approved at former Chapter 22–4–4. There is no direct Federal counterpart to this provision. However, we find that the requirements of this provision do not render the West Virginia program less effective than the Federal regulations concerning blasting at 30 CFR part 850 concerning training, examination, and certification of blasters and can be approved.

199–1–4.3.b and 4.3.b.1 Examination for certified blaster. These provisions identify the topics that must be covered in the *Study Guide for West Virginia Surface Mine Blasters* and by the examination for certified blasters. Similar provisions were previously approved at former Chapter 22–4–5.03(A)(1). The requirement providing that the examination will also test on information contained in the self-study course was previously approved for both blaster examiners/inspectors and certified blasters at CSR 38–2C–5.1 and 5.2 (61 FR at 6528; February 21, 1996). At CSR 199–1–4.3.b, the words ''three (3) parts'' were deleted. This is a nonsubstantive change, relating to parts of the examination that are no longer applicable, that does not affect the approved provision. We find that the revised blaster examination provisions at subdivisions 4.3.b and 4.3.b.1 are consistent with the Federal requirements at 30 CFR 850.13(b) and 850.14(b) and can be approved.

199–1–4.3.b.2 This provision provides that the examination for certified blaster shall also include a simulation examination whereby the applicant must correctly and properly complete a blasting log. A similar provision was previously approved at former Chapter 22–4–5.03(A)(2). While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirement concerning blaster training at 30 CFR 850.13(b)(8) and 850.14(b) and can be approved.

199–1–4.3.b.3 This provision provides that the examination for certified blaster shall also include other portions or parts developed to demonstrate an applicant's ability to use explosives products and equipment properly, as deemed appropriate by the Secretary of the WVDEP. Provisions requiring hands-on simulation, including wiring, checking and shooting a blast were previously approved at former Chapter 22–4–5.03(A)(3). While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirements concerning blaster training at 30 CFR 850.13(b) and 850.14 and can be approved.

199–1–4.3.c Standards for Blaster Exam. This provision provides that a score of 80 percent for the multiple choice examination, and satisfactory completion of the blasting log portion, and any other portions that may be included in the examination, which are graded on a pass/fail basis, are required for successful passage of the examination for certified blaster. Similar provisions were previously approved at former Chapter 22–4–5.03(B), except, as proposed, hands-on simulation may not necessarily be required to pass the examination. We find that the revised provision is not inconsistent with the Federal requirements for blaster examination at 30 CFR 850.14 and can be approved.

199–1–4.3.d Notification of scores. This provision provides that the Office must notify all persons of their scores within 30 days of completing the examination. A person who fails to achieve a passing score of any of the parts of the examination, may apply, after receipt of his or her examination results, to retake the entire examination or any portions that the individual failed to pass. Any person who fails to pass the exam on the second attempt must certify that he/she has taken or retaken the training course described at CSR 199–1–4.2 prior to applying for another examination. Similar provisions regarding notification of scores were previously approved at former Chapter 22–4–5.03(C), except the person was required to retake the entire examination. There is no direct Federal counterpart to this provision. We find, however, that it is consistent with the Federal requirements for blaster examination at 30 CFR 850.14 and can be approved.

199–1–4.4 Approval of certification. This provision provides that upon determination that an applicant for certification has satisfactorily passed the examination, the Secretary of the WVDEP shall, within 30 days of the examination date, issue a certification card to the applicant. Similar provisions regarding approval of certification were previously approved at former Chapter 22–4–6.03. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirements for blaster examination at 30 CFR 850.15(a) concerning issuance of certification and can be approved.

199–1–4.5 Conditions or practices prohibiting certification. This provision provides that the Secretary of the WVDEP shall not issue a blaster certification or re-certification to persons who: are currently addicted to alcohol, narcotics or other dangerous drugs; have exhibited a pattern of conduct inconsistent with the acceptance of responsibility for blasting operations; or are convicted felons. Similar requirements prohibiting blaster certification were previously approved at former Chapter 22–4–6.01, except for the new provision relating to convicted felons, which has no direct Federal counterpart. Nevertheless, we find that the entire provision is consistent with the Federal provisions concerning issuance of certification at 30 CFR 850.14(a) and 850.15(a) and (b) and can be approved.

199–1–4.6.a Refresher training. This provision provides that all certified blasters must complete a minimum of 12 hours of refresher training during the three-year period that each blaster's certification is in effect. This refresher training requirement may be satisfied by attendance at various professional and technical seminars and meetings approved by the Office, or by attendance at a refresher training session conducted by the Office. The Secretary of the WVDEP may establish a fee for refresher training to cover costs to the Office. Similar provisions requiring annual refresher training were previously approved at former Chapter 22–4–3.01(B). While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal provision concerning recertification at 30 CFR 850.15(c) and can be approved.

199–1–4.6.b Re-certification of blasters. This provision provides that a certified blaster must be re-certified every three (3) years. Each applicant for re-certification must be currently certified and must document that he or she satisfactorily meets the experience requirements of CSR 199–1–4.1.b and has satisfied the refresher training requirement at CSR 199–1–4.6.a. The application for re-certification must be submitted on forms prescribed by the Secretary with a thirty dollar ($30.00) reapplication fee. Similar provisions regarding re-certification were previously approved at former Chapter 22–4–7.01, except for the re-application fee. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirement for recertification at 30 CFR 850.15(c) and can be approved.

199–1–4.6.c Re-training. This provision provides that an applicant for re-certification, who does not meet the experience requirements of CSR 199–1–4.1.b, must take the training course, and must take and pass the examination required in CSR 199–1–4.3.b. Similar provisions were previously approved at former 22–4–7.01(B) and CSR 38–2C–8.2, except for the modified provision at subsection 8.2 allowing for the completion of the self-study course as an option to completing the refresher training course, which is to be deleted. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal provision regarding training for certified blasters at 30 CFR 850.13(a), as well as the provision for recertification of blasters at 30 CFR 850.15(c), and can be approved.

199–1–4.6.d Re-examination. This provision provides that each certified blaster shall be required to successfully complete the examination for certified surface coal mine blasters at least once every sixth year, as required by CSR 199–1–4.3.b. Similar provisions regarding re-examination were previously approved at former Chapter 22–4–7.02. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirement for recertification of blasters at 30 CFR 850.15(c) and can be approved.

199–1–4.7 Presentation of certificate; Transfer; and Delegation of authority. This provision provides that: Upon request by the Secretary of the WVDEP, a certified blaster shall exhibit his/her blaster certification card; The certified blaster shall take all reasonable care to protect his/her certification card from loss or unauthorized duplication, and shall immediately report any such loss or duplication to the Office; Blaster's certifications may not be transferred or assigned; and certified blasters shall not delegate their authority or responsibility to any individual who is not a certified blaster. A certified blaster shall not take any instruction or direction on blast design, explosives loading, handling, transportation and detonation from a person not holding a blaster's certificate, if such instruction or direction may result in an unlawful act, or an improper or unlawful action that may result in unlawful effects of a blast. A person not holding a blaster's certification who requires a certified blaster to take such action may be prosecuted under W. Va. Code 22–3–17(c) or (i). Similar provisions regarding presentation, transfer and delegation of blaster certification were previously approved at former Chapter 22–4–8. We find that the revised provision is no less effective than the Federal requirements for recertification of blasters at 30 CFR 850.15(d) and (e) and can be approved.

199–1–4.8 Violations by a certified blaster. This provision provides that the Secretary of the WVDEP may issue a temporary suspension order against a certified blaster who is, based on clear and convincing evidence, in violation of any of the items listed at CSR 199–1–4.8.a through 4.8.e. The proposed language was copied and amended from approved language at CSR 38–2C–10.1 concerning violations, and 38–2–11.1 concerning suspension. Language authorizing the Secretary to issue a cessation order and/or take other action was removed from former CSR 38–2C–10.1, but the Secretary retained authority to issue a notice of violation for violations by a certified blaster as approved on February 21, 1996 (61 FR 6528–6529). The revised provision is similar to CSR 38–2C–10.1 with the following changes. At subsection CSR 199–1–4.8, the words ''notice of violation'' were deleted and replaced with the words ''temporary suspension order.'' With these changes, the Secretary of WVDEP may issue a temporary suspension order against a certified blaster who is, based on clear and convincing evidence, in violation of any of the provisions listed at CSR 199–1–4.8.a through 4.8.e. We find that the proposed State language as revised is consistent with the Federal regulations at 30 CFR 850.15(b), concerning suspension and revocation of blaster certification, and can be approved, except as follows.

199–1–4.8.c. Violations by a certified blaster. The words ''substantial or significant'' were added prior to the word ''violations;'' the words ''or state'' were added after the word ''federal'; and the words ''or the approved blast plan for the permit where the blaster is working'' were added after the word ''explosives.'' With these changes, violations of Federal or State laws or regulations related to explosives or the approved blasting plan must be ''substantial or significant'' violations before a temporary suspension order can be issued. We find that the proposed State language is not consistent with the Federal regulations at 30 CFR 850.15(b)(1)(iii) which authorizes suspension or revocation for violation of any provision of the State or Federal explosives laws or regulations. The proposed language is narrower than its Federal counterpart, since it allows for suspension or revocation of blaster certification based only on ''substantial or significant'' violations. In contrast, the Federal regulations at 30 CFR 850.15(b) authorize suspension or revocation of the blaster certification for any type of violation of State or Federal explosives laws or regulations. Therefore, we are not approving the phrase ''substantial or significant'' at CSR 199–1–4.8.c. We are approving the reference to State laws and regulations, because it is no less effective than the Federal regulation at 30 CFR 850.15(b)(1)(iii) and can be approved. We also find that the addition of the words ''or the approved blast plan for the permit where the blaster is working'' do not render the provision less effective than 30 CFR 850.15(b)(1)(iii) and can be approved.

199–1–4.8.d Violations by a certified blaster. This provision identifies ''false swearing in order to obtain a blaster's certification card'' as a violation that the Secretary may issue a temporary suspension order against a certified blaster. The counterpart Federal

regulations at 30 CFR 850.15(b)(1)(iv) provide that the regulatory authority may suspend or revoke a blaster's certification for, among other reasons, providing false information or a misrepresentation to obtain certification. The Federal provision encompasses more than swearing under oath. It is our understanding that the State provision encompasses swearing under oath, as well as providing false information or a misrepresentation to obtain blaster certification. Our finding that this provision is no less effective than the Federal regulations at 30 CFR 850.15(b)(1)(iv) is based on this understanding. Therefore, subdivision 4.8.d can be approved.

199–1–4.8.e Illegal or improper actions by a blaster. At subdivision 4.8.e., the words ''in the use, handling, transportation, or storage of explosives or in designing and executing a blast,'' were added after the words ''certified blaster.'' In addition, the words ''a blast site'' are deleted and replaced with the words ''or near a mine site.'' As amended, the Secretary of WVDEP may issue a temporary suspension order against a certified blaster for any illegal or improper action taken by a certified blaster in the use, handling, transportation, or storage of explosives or in designing and executing a blast, which may or has led to injury or death at or near a mine site. While there is no direct Federal counterpart to this new language, we find that it is not inconsistent with the Federal regulations at 30 CFR 850.15(b)(1) and can be approved.

199–1–4.9.a Suspension. This provision provides that upon service of a temporary suspension order, the certified blaster shall be granted a hearing before the Secretary of the WVDEP to show cause why his or her certification should not be suspended or revoked. Similar language was previously approved at CSR 38–2C–11.1, except the former provision provided that issuance of the suspension order was based upon the service of a notice of violation. Prior to the issuance of such an order, the certified blaster would be granted a hearing regarding the proposed suspension. We find that the revised provision is no less effective than the Federal regulations concerning suspension or revocation of the certification of a blaster at 30 CFR 850.15(b)(1) and can be approved. CSR 199–1–4.9.a also provides that the period of suspension will be conditioned on the severity of the violation committed by the certified blaster, and, if the violation can be abated, the time period in which the violation is abated. The Secretary of the WVDEP may require remedial actions and measures and retraining and reexamination as a condition for reinstatement of certification. While there is no direct Federal counterpart to this provision, we find that the State provision is not inconsistent with the Federal regulations at 30 CFR 850.15(b) and can be approved.

199–1–4.9.b Revocation of blaster certification. This provision provides that if the remedial action required to abate a suspension order issued by the Secretary of the WVDEP to a certified blaster, or any other action required at a hearing on the suspension of a blaster's certification, is not taken within the specified time period for abatement, the Secretary of the WVDEP may revoke the blaster's certification and require the blaster to relinquish his or her certification card. Revocation will occur if the certified blaster fails to retrain or fails to take and pass reexamination as a requirement for remedial action as described in subsection 12.1 of this rule. We note that the reference to subsection 12.1 is a typographical error, and the correct citation is subdivision 4.9.a. We approved the deletion of the phrase ''or a cessation order'' from this subsection on February 21, 1996 (61 FR 6529). The State further proposes to amend this subsection by deleting the words ''notice of violation'' and adding in their place the words ''suspension order.'' In addition, the phrase ''or any other action required at a hearing on the suspension of a blaster's certification'' was added to the first sentence, after the words ''certified blaster.'' We find that these changes are not inconsistent with the Federal regulations and can be approved.

While we are approving, with the exception noted above, the State's proposed rules addressing suspension and revocation, we note that there is one Federal requirement not covered by these rules. The State lacks a counterpart to the Federal provision at 30 CFR 850.15(b)(1) that provides that the regulatory authority must suspend or revoke a blaster's certification upon a finding of willful conduct that was previously addressed at West Virginia Administrative Regulations 22–4–6.01.C. Therefore, the State must further amend CSR 199–1–4.9.a and 4.9.b, or otherwise amend the West Virginia program, to provide that upon a finding of willful conduct, the Secretary ''shall'' revoke or suspend a blaster's certification.

199–1–4.9.c Reinstatement. This provision provides that subject to the discretion of the Secretary of the WVDEP, and based on a petition for reinstatement, any person whose blaster certification has been revoked, may, if the Secretary of the WVDEP is satisfied that the petitioner will comply with all blasting laws and rules, apply to re-take the blasters certification examination, provided the person meets all of the requirements for blasters certification specified by this subsection, and has completed all requirements of the suspension and revocation orders, including the time period of the suspension. While there is no direct Federal counterpart to this provision, we find that the provision is not inconsistent with the Federal regulations concerning suspension and revocation of blasters certifications at 30 CFR 850.15(b) and can be approved.

199–1–4.9.d Civil and criminal penalties. This provision provides that any certified blaster is subject to the individual civil and criminal penalties provided for in W. Va. Code 22–3–17. While there is no direct Federal counterpart to this provision, we find that it is not inconsistent with either SMCRA at section 518 concerning penalties, nor 30 CFR part 846 concerning individual civil penalties and can be approved.

199–1–4.10 Hearings and appeals. This provision provides that any certified blaster who is served a suspension order, revocation order, or civil and criminal sanctions is entitled to the rights of hearings and appeals as provided for in W. Va. Code 22–3–16 and 17. We find that this provision is not inconsistent with the Federal regulations concerning suspensions and revocations of blasters certifications at 30 CFR 850.15(b) and can be approved.

199–1–4.12 Reciprocity with other states. This provision provides that the Secretary of the WVDEP may enter into a reciprocal agreement with other states wherein persons holding a valid certification in that state may apply for certification in West Virginia, and upon approval by the Secretary of the WVDEP, be certified without undergoing the training or examination requirements set forth in this rule. There is no direct Federal counterpart to this State provision. However, because all state coal mining regulatory programs are subject to the same minimum Federal standards under SMCRA at section 719 and the Federal regulations at 30 CFR part 850, we find that this provision does not render the West Virginia program less effective than those Federal requirements concerning the training, examination, and certification of blasters and can be approved.

12. CSR 199–1–5 Blasting Damage Claim.

199–1–5 Blasting damage claim. This section is new, and identifies the characteristics of the types of blasting damage, and provides requirements concerning filing a claim, responsibilities of claims administrators, and the responsibilities of claims adjusters. There is no direct Federal counterpart to the provisions concerning claims for blasting damage at CSR 199–1–5. We find that these provisions are not inconsistent with SMCRA section 515(b)(15) concerning blasting, nor with the Federal blasting regulations at 30 CFR 816/817.61 through 68 and can be approved. However, one specific provision within section 5 requires further explanation, which follows.

199–1–5.2.a.4 Filing a claim. This provision states that if the property owner declines to submit a claim to the Office of Explosives and Blasting under part 5.2.a.3.C.4, then the Office's involvement will be concluded. We understand this to mean that CSR 199–1–5.2.a.4 authorizes the Office to conclude its involvement with the claims process as identified at CSR 199–1–5, but it does not mean that the Office or the WVDEP will be precluded from issuing a blasting-related NOV, CO, or taking other enforcement actions where blasting-related violations that cause property damage have occurred. Therefore, based upon that understanding, we find that CSR 199–1–5.2.a.4 is not inconsistent with SMCRA and the Federal regulations at 30 CFR 816/817.61–68 and can be approved. If, in future reviews, we should determine that West Virginia is implementing this provision inconsistent with this finding, a further amendment may be required.

13. CSR 199–1–6 Arbitration.

199–1–6 Arbitration for blasting damage claims. This section provides for the listing and selection of arbitrators, preliminary information to the arbitrator, demand for arbitration and timeframes for arbitration, place of arbitration, confidentiality of the arbitration process, presentations to the arbitrator, arbitration award, fees, costs and expenses, binding nature of the award, and payment of the award. There are no Federal counterparts to these provisions concerning arbitration for blasting damage claims. We find, however, that these provisions are not inconsistent with SMCRA section 515(b)(15) concerning blasting, nor with the Federal blasting regulations at 30 CFR 816/817.61 through 816/817.68 and can be approved. However, further explanation of one provision is needed, as follows.

199–1–6.8 Arbitration award, fees, costs, and expenses. This subsection limits a claimant's recovery of costs and attorney fees to $1,000.00 when an operator requests arbitration and the initial claim determination in favor of the claimant is upheld in whole or in part. Otherwise, the parties are equally responsible for the cost of the proceeding and are responsible for their own fees and costs. This provision can not supersede existing attorney fees provisions pertaining to citizens who prevail in enforcement actions or appeals involving blasting violations. Therefore, and with the understanding that this provision does not affect any claimant's involvement in proceedings where fees can be claimed under CSR 199–1–8.13 or CSR 38–2–20.12 regardless of whether or not they enter the arbitration claims process, we find that CSR 199–1–6.8 is not inconsistent with the Federal regulations at 43 CFR 4.1290–96 and can be approved.

14. CSR 199–1–7 Explosive Material Fee.

199–1–7 Explosive Material Fee. These provisions provide for the assessment fee on blasting material, requirements for remittance of the fee, availability of material delivery records and inventories, dedication of the fee, expenditures, sufficiency of fees, authorization of WVDEP to invest accrued earnings, and consequences of noncompliance. There are no direct Federal counterparts to these provisions concerning the explosive material fee. We find, however, that these provisions are not inconsistent with SMCRA section 515(b)(15) concerning blasting, nor with the Federal blasting regulations at 30 CFR 816/817.61 through 68. In addition, we find that CSR 199–1–7.2, regarding the submittal and availability of records concerning the delivery, inventory, and use of explosives is not inconsistent with 30 CFR 840.12(b) concerning inspection of documents. Therefore, we find that CSR 199–1–7 can be approved.

15. CSR 199–1–8 Inspections.

199–1–8 Inspections. These provisions provide for inspections of blasting operations, compliance conferences, notice of violations, cessation orders, show cause orders, civil penalty determinations, procedure for assessing civil penalties, assessment rates, when an individual civil penalty may be assessed, amount of individual civil penalty, procedure for assessment for individual civil penalty, payment of penalty, and fees and costs of administrative proceedings. These provisions at CSR 199–1–8 can be approved because they are identical to approved provisions in the West Virginia program at CSR 38–2–20.1.e. through 20.12 concerning inspection and enforcement, with the following exceptions.

199–1–8.1 Inspections. This subsection states that ''[i]nspections shall be made on any prospecting, active surface mining operation, or inactive surface mining operation as necessary to assure compliance with the WV Code 22–3 and 3A, this rule, and the terms and conditions of the blasting plan.'' We understand that this provision only governs blasting-specific inspections which supplement and do not supersede the inspection frequency requirements for surface coal mining and reclamation operations and prospecting operations contained in CSR 38–2–20.1.a. through 20.1.d. Therefore, and based on our understanding described above, we find subsection 8.1 to be consistent with the Federal regulations at 30 CFR 840.11, and it can be approved.

CSR 199–1–8.3 Notice of Violations. The regulations at subsection 8.3, which govern imminent harm cessation orders, lack a counterpart to CSR 38–2–20.3.a.4, which states that mining without a valid permit or prospecting approval constitutes imminent harm. However, the approved provisions at CSR 38–2–20.3.a.4 require the issuance of a cessation order to an operator conducting mining-related blasting without a valid permit or prospecting approval. Therefore, we find the proposed requirements at CSR 199–1–8.3 to be no less effective than the Federal requirements at 30 CFR 840.13 and 843.11 and can be approved.

CSR 199–1–8.6 Civil Penalty Determinations. The sentence at CSR 199–1–8.6 concerning civil penalty assessments is new, and provides as follows:

> 8.6. Civil Penalty Determinations. Except as specified in WV Code section 22–3–30a(b), civil penalties for any notice of violation issued by the Office of Explosives and Blasting shall be determined by the following procedure.

We approved W. Va. Code 22–3–30a(b) on November 12, 1999 (64 FR 61507, 61517). In approving that provision, we stated that our approval of W. Va. Code 22–3–30a(b) was only upon the condition that any implementing regulations later promulgated by the State contain the four criteria for assessing civil penalties found at section 518(a) of SMCRA. The criteria are history of violations, seriousness of the violation, negligence, and demonstrated good faith of the permittee. As discussed above at Finding B.4., the penalties set forth in W. Va. Code 22–

3–30a(b) are punitive penalties for blasting violations that result in property damage. Because they are punitive in nature, these penalties are in addition to the civil penalties that are assessed under CSR 199–1–8.6, 8.7 and 8.8. The proposed language at CSR 199–1–8.6 reaffirms this finding by providing that the violations cited under W. Va. Code 22–3–30a(b) are exempt from the civil penalty assessment procedures. The determination of the supplemental penalty amounts for blasting violations that result in property damage are limited to the factors set forth in W. Va. Code 22–3–30a(b). Furthermore, notices of violation, including those that are issued by the Office of Explosives and Blasting that relate to property damage, are subject to the civil penalty assessment procedures set forth in CSR 199–1–8.6, 8.7 and 8.8. Given this interpretation, we no longer find our original conditional approval of W. Va. Code 22–3–30a(b) to be applicable. In addition, we find that the new language at CSR 199–1–8.6, 8.7 and 8.8 is not inconsistent with section 518 of SMCRA and the Federal regulations at 30 CFR part 845 and can be approved.

There appear to be errors in the civil penalty assessment rates set forth in subdivisions 8.8.b and 8.8.d concerning seriousness of the violation and the operator's good faith. In the table regarding seriousness of the violation under rating 6, the dollar amount should be $1400, not $1200, and in the good faith table, the percentage under rating 3 should be 15%, not 20% as shown. These typographical errors are also in the civil penalty assessment rate tables at CSR 38–2–20.7.b and 20.7.d. While these errors do not render the tables inconsistent with the Federal requirements, it is recommended that they be revised.

16. Surface Mine Board.

CSR 199–1–9 Surface Mine Board. This provision provides for open meetings, appeals to the surface mine board, and prohibits *ex parte* communication. CSR 199–1–9 concerning Surface Mine Board is identical to the approved West Virginia program at CSR 38–2–21 concerning the Surface Mine Board. Therefore, we find that the addition of CSR 199–1–9 does not render the West Virginia program inconsistent with SMCRA nor less effective than the Federal regulations and can be approved.

IV. Summary and Disposition of Comments

Public Comments

In response to our request for comments from the public on the proposed amendments (*see* Section II of this preamble), we received the following comments from the American Arbitration Association (AAA). By letter dated January 3, 2001 (Administrative Record Number WV–1193), the AAA commented on Section CSR 199–1–17, Arbitration for Blasting Damage Claims. (This section was subsequently recodified at CSR 199–1–6.) Specifically, the AAA commented on subsection CSR 199–1–6.1 that states, ''It is anticipated that the office will recommend the roster be maintained by the American Arbitration Association from which the parties will choose the arbitrator.''

The AAA acknowledged that it has had discussions with the West Virginia Office of Explosives and Blasting concerning AAA involvement in arbitrating blasting-related disputes. However, the AAA stated that the proposed blasting rule deviates from the AAA's established rules and procedures, and does not conform to its discussions with officials of the West Virginia Office of Explosives and Blasting. The AAA further stated that, although programs such as this do not need to exactly match the AAA's existing rules, the AAA will not be bound through regulation to administer an unfair program.

The AAA stated that it will continue to work with the West Virginia Office of Explosives and Blasting to develop a fair and expeditious program to administer and resolve disputes. However, the AAA stated, the AAA reserves the right to refuse administration of the disputes if the program, at any time, deviates from the established AAA standards.

By letter dated April 20, 2001 (Administrative Record Number WV–1208), WVDEP, Office of Explosives and Blasting sent us a letter with its comments on the AAA's letter. The Office of Explosives and Blasting stated that it is working with the AAA to compile a list of arbitrators according to CSR 199–1–6. The Office stated that since it has no experience with the arbitration process, it fully intends to let the AAA proceed in its normal operating capacity, as long as the Office still meets the requirements of the rule. The Office also stated that in a recent conversation with AAA, the AAA informed the Office that the AAA's comment concerning CSR 199–1–6 is a general statement, sent as documentation of AAA established administrative rules. The Office further stated that it is working with AAA to implement the process.

In response, we acknowledge the AAA's concern and we recognize that its participation with West Virginia in the arbitration of blasting-related disputes is voluntary. We encourage the AAA to continue working with the State Office of Explosives and Blasting to resolve its concerns. We note that any changes the State makes to its blasting rules at CSR 199–1 as a result of its discussions with the AAA will need to be submitted to OSM as a program amendment for approval. In addition, we note that the sentence quoted above that was the subject of the AAA's comment was deleted from the regulations when they were recodified at CSR 199–1–6.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on December 1, 2000, and February 1, 2002, we requested comments on these amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV–1188 and WV–1268, respectively). We received comments from three Federal agencies. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded by letter dated March 1, 2002, and stated that the employee and adjacent landowner safety provisions are consistent with MSHA blasting standards (Administrative Record Number WV–1281). MSHA also stated that it found no issues or impact upon coal miner's health and safety.

The U.S. National Park Service responded by letter dated February 5, 2002, and stated that it had no specific comments (Administrative Record Number WV–1270).

The Department of the Army, U.S. Army Corps of Engineers responded on February 26, 2002, and stated that its review found the proposed amendment to be generally satisfactory to the agency (Administrative Record Number WV–1279). In addition, the Corps of Engineers stated that it has a concern with the relationship between the blasting plans discussed in CSR 199–1–3.2 and the agency's responsibilities in administering section 404 of the Clean Water Act. To avoid any confusion that the proposed amendment supersedes the requirements of section 404 of the Clean Water Act, the agency suggested including a statement in the amendment indicating that a separate authorization is required from the U.S. Army Corps of Engineers for all work involving any discharge of dredged or fill material into the waters of the United States. In response, there is nothing in the proposed amendments that supersedes any of the requirements of Section 404 of the Clean Water Act. Therefore, the

addition of such a statement in the amendment is not necessary.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of these West Virginia amendments pertains to air or water quality standards. Therefore, we did not ask EPA for its concurrence on any of the proposed amendments.

By letters dated December 1, 2000, and February 1, 2002, we requested comments from EPA on these amendments (Administrative Record Numbers WV–1188 and WV–1268, respectively).

The EPA responded by letters dated January 17, 2001, April 13, 2001, and February 28, 2002 (Administrative Record Numbers WV–1196, WV–1207, and WV–1282, respectively). EPA stated that it appears that the amendment is in compliance with the Clean Water Act and other statutes and regulations under the jurisdiction of the EPA.

V. OSM's Decision

Based on the above findings, and except as noted below, we are approving the amendments submitted to us on October 30, 2000 and November 28, 2001.

At CSR 199–1–3.10.d., the phrase ''and only used for evaluating damage claims'' is approved with the understanding that it does not preclude the use of pre-blast surveys to support the issuance of NOVs, COs, civil penalties or other forms of alternative enforcement actions under the West Virginia Surface Coal Mining and Reclamation Act and its implementing regulations to achieve the repair of blasting damage and thus resolve a damage claim. At CSR 199–1–4.8.c., we are not approving the phrase ''substantial or significant.'' In addition, we are requiring the State to amend CSR 199–1–4.9.a and 4.9.b, or otherwise amend the West Virginia program, to provide that upon finding of willful conduct, the Secretary shall revoke or suspend a blaster's certification.

To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a

substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 17, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.12 is amended by adding new paragraph (d) to read as follows:

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

* * * * *

(d) We are not approving the following provision of the proposed blasting-related program amendment that West Virginia submitted on October 30, 2000, and November 28, 2001: At CSR 199–1–4.8.c, the phrase ''substantial or significant'' is not approved.

* * * * *

■ 3. Section 948.15 is amended in the table by adding a new entry in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
*	*	*
October 30, 2000, November 28, 2001	December 10, 2003	W.Va. Code 22–3–13a(a)(3), (b), (c), (f)(14), (g); 22a(a), (b), (e), (f), (g); 30a(b), (b)(3), (b)(3)(C), (b)(5), (c), (d), (e), (f), (h). Code of State Regulations CSR 199–1, except as identified at 30 CFR 948.12(d), and subdivision 3.10.d is a qualified approval.

■ 4. Section 948.16 is amended by adding paragraph (a) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(a) By February 9, 2004, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 199–1–4.9.a and 4.9.b, or otherwise amend the West Virginia program, to provide that upon finding of willful conduct, the Secretary shall revoke or suspend a blaster's certification.

* * * * *

[FR Doc. 03–30550 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NV108–SWIa; FRL–7595–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Commercial/Industrial Solid Waste Incinerator Units; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a negative declaration submitted by the Nevada Division of Environmental Protection. The negative declaration certifies that commercial/industrial solid waste incinerator units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the agency's air pollution control jurisdiction.

DATES: This rule is effective on February 9, 2004 without further notice, unless EPA receives adverse comments by January 9, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the Clean Air Act (CAA or the Act) require States to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new

sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA also requires EPA to promulgate EG for commercial/industrial solid waste incinerator (CISWI) units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 1, 2000 (65 FR 75338), EPA promulgated CISWI unit new source performance standards and EG, located at 40 CFR part 60, subparts CCCC and DDDD, respectively. The designated facility to which the EG apply is each existing CISWI unit, as defined in subpart DDDD, that commenced construction on or before November 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of State plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a State, the State must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the State, the State may submit a letter of certification to that effect (*i.e.,* negative declaration) in lieu of a plan. The negative declaration exempts the State from the requirements of subpart B for the submittal of a 111(d)/129 plan.

II. Final EPA Action

The Nevada Division of Environmental Protection (NDEP) has determined that there are no designated facilities subject to the CISWI unit EG requirements in its air pollution control jurisdiction. On October 16, 2003, NDEP submitted to EPA a negative declaration letter certifying this fact. EPA is amending 40 CFR part 62, subpart DD (Nevada) to reflect the receipt of this negative declaration letter.

After publication of this **Federal Register** notice, if a CISWI facility is later found within the NDEP jurisdiction, then the overlooked facility will become subject to the requirements of the Federal CISWI 111(d)/129 plan, including the compliance schedule. The Federal plan would no longer apply if EPA subsequently were to receive and approve a 111(d)/129 plan from NDEP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirements for State air pollution control agencies under 40 CFR parts 60 and 62. In the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve NDEP's negative declaration should relevant adverse or critical comments be filed.

This rule will be effective February 9, 2004 without further notice unless the Agency receives relevant adverse comments by January 9, 2004. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves a State determination as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State negative declaration in response to implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the section 111(d)/129 negative declaration submitted by NDEP may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: November 19, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 62, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart DD—Nevada

■ 2. Section 62.7130 is amended by adding paragraph (c) to read as follows:

§ 62.7130 Identification of plan.

* * * * *

(c) The Nevada Division of Environmental Protection submitted on October 16, 2003, a letter certifying that there are no existing commercial/industrial solid waste incineration units in its jurisdiction that are subject to 40 CFR part 60, subpart DDDD.

[FR Doc. 03–30590 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–U

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–55

[GSPMR Amendment 2003–01; GSPMR Case 2003–105–1]

RIN 3090–AH84

General Services Administration Property Management Regulations; Collection of Claims Owed the United States

AGENCY: Office of Finance, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending and reissuing its regulations concerning the procedures used to collect debts owed to GSA by incorporating applicable provisions as required by the Debt Collection Improvement Act of 1996 (DCIA) and the Federal Claims Collection Standards.

DATES: Effective date: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael J. Kosar, Office of the Chief Financial Officer Room 3121, 1800 F Street, NW., telephone (202) 501–2029; electronic mail *mike.kosar@gsa.gov*. Please cite GSPMR Amendment 2003–01, GSPMR case 2003–105–1.

SUPPLEMENTARY INFORMATION:

A. Background

GSA is amending and reissuing its debt collection procedures to incorporate changes presented in the amended Federal Claims Collection Standards (FCCS) issued jointly on November 22, 2000, by the Department of the Treasury (Treasury) and the Department of Justice (DOJ), under the Debt Collection Improvement Act of 1996 (DCIA). GSA currently has rules for collecting unpaid debts through three offset methods: administrative, salary, and tax refund. These rules were adopted with then existing provisions of the Debt Collection Act of 1982, the FCCS of 1966, and other authorities governing the collection of Federal debts.

Discussion of Comments. GSA received no comments in response to its proposed rule concerning Collection of Claims Owed the United States published in the **Federal Register** at 68 FR 41274, July 11, 2003.

B. Executive Order 12866

GSA has determined this regulation is not a significant regulatory action as defined in Executive Order 12866 and, accordingly, this regulation has not been reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for GSA to streamline debt collection regulations, or (2) reflects the statutory language contained in the DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

D. Executive Order 13132

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

G. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the

Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 41 CFR Part 105–55

Claims owed the United States, Antitrust, Fraud, Taxes, Interagency claims, Offset, Payments, Administrative practice and procedure, Credit bureaus, Compromise, Suspension, Termination and discharge of debts, Hearing and appeals procedures, Debts.

Dated: December 2, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 105 as follows:

CHAPTER 105—[AMENDED]

■ 1. Revise part 105–55 to read as follows:

PART 105–55—COLLECTION OF CLAIMS OWED THE UNITED STATES

Sec.

Authority: 5 U.S.C. 552–553; 31 U.S.C. 321, 3701, 3711, 3716, 3717, 3718, 3719, 3720B, 3720D; 31 CFR parts 900–904.

§ 105–55.001 Prescription of standards.

(a) The Secretary of the Treasury and the Attorney General of the United States issued regulations for collecting debts owed the United States under the authority contained in 31 U.S.C. 3711(d)(2). The regulations in this part prescribe standards for the General Services Administration (GSA) use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific GSA statutes or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. The regulations in this part also prescribe standards for referring debts to the Department of Justice for litigation. Additional guidance is contained in the Office of Management and Budget's Circular A–129 (Revised), ''Policies for Federal Credit Programs and Non-Tax Receivables,'' the Department of the Treasury's ''Managing Federal Receivables,'' and other publications concerning debt collection and debt management.

(b) GSA is not limited to the remedies contained in this part and will use all authorized remedies, including alternative dispute resolution and arbitration, to collect civil claims, to the extent such remedies are not inconsistent with the Federal Claims Collection Act, as amended, Chapter 37 of Title 31, United States Code; the Debt Collection Act of 1982, 5 U.S.C. 5514; the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*, or other relevant statutes. The regulations in this part are not intended to impair GSA's common law rights to collect debts.

(c) Standards and policies regarding the classification of debt for accounting purposes (for example, write off of uncollectible debt) are contained in the Office of Management and Budget's Circular A–129 (Revised), ''Policies for Federal Credit Programs and Non-Tax Receivables.''

§ 105–55.002 Definitions.

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(b) *Compromise* means the reduction of a debt as provided in §§ 105–55.019 and 105–55.020.

(c) *Debt collection center* means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(d) *Debtor* means an individual, organization, association, corporation, partnership, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

(e) *Delinquent* or *past-due non-tax debt* means any non-tax debt that has not been paid by the date specified in GSA's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(f) For the purposes of the standards in this part, unless otherwise stated, the *term Administrator* refers to the *Administrator* of General Services or the Administrator's delegate.

(g) For the purposes of the standards in this part, the terms *claim* and *debt* are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by GSA to be due the United States from any person, organization, or entity, except another Federal agency, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources, including debt administered by a third party as an agent for the Federal Government. For the purposes of administrative offset under 31 U.S.C. 3716, the terms *claim* and *debt* include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(h) For the purposes of the standards in this part, unless otherwise stated, the terms *GSA* and *Agency* are synonymous and interchangeable.

(i) For the purposes of the standards in this part, unless otherwise stated, *Secretary* means the Secretary of the Treasury or the Secretary's delegate.

(j) For the standards in this part, Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations.

(k) *Hearing* means a review of the documentary evidence concerning the existence and/or amount of a debt, and/or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

(l) *Hearing official* means a Board Judge of the GSA Board of Contract Appeals.

(m) In this part, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms *includes* and *including* do not exclude matters not listed but do include matters that are in the same general class.

(n) *Reconsideration* means a request by the employee to have a secondary review by GSA of the existence and/or amount of the debt, and/or the proposed offset schedule.

(o) *Recoupment* is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(p) *Taxpayer identifying number* means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

(q) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt or debt-related charge as permitted or required by law.

§ 105–55.003 Antitrust, fraud, tax, interagency claims, and claims over $100,000 excluded.

(a) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. The standards of this part relating to the administrative collection of claims do apply, but only to the extent authorized by the Department of Justice (DOJ) in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, the General Services Administration (GSA) will promptly refer the case to the GSA Office of Inspector General (OIG). The OIG has the responsibility for investigating or referring the matter, where appropriate, to DOJ for action. At its discretion, DOJ may return the claim to GSA for further handling in accordance with the standards of this part.

(b) This part does not apply to tax debts.

(c) This part does not apply to claims between GSA and other Federal agencies.

(d) This part does not apply to claims over $100,000.

§ 105–55.004 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in this part precludes the General Services Administration (GSA) disposition of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in this part. *See, e.g.*, the Federal Medical Care Recovery Act, 42 U.S.C. 2651–2653, and applicable regulations, 28 CFR part 43. In such cases, the laws and regulations specifically applicable to claims collection activities of GSA generally take precedence.

§ 105–55.005 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, the General Services Administration may demand the return of specific property or the performance of specific services.

§ 105–55.006 Subdivision of claims not authorized.

Debts will not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered a single debt in determining whether the debt is one of less than $100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise, suspension or termination of collection activity.

§ 105–55.007 Required administrative proceedings.

The General Services Administration is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§ 105–55.008 No private rights created.

The standards in this part do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of the General Services Administration to comply with any of the provisions of this part be available to any debtor as a defense.

§ 105–55.009 Aggressive agency collection activity.

(a) The General Services Administration (GSA) will aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, GSA. Collection activities will be undertaken promptly, including letters, telephone calls, electronic mail (e-mail), and Internet inquiries, with follow-up action taken as necessary.

(b) Debts referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), will be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) GSA will cooperate with other agencies in their debt collection activities.

(d) GSA will consider referring debts that are less than 180 days delinquent to Treasury or to Treasury-designated ''debt collection centers'' to accomplish efficient, cost effective debt collection. Treasury is a debt collection center, is authorized to designate other Federal agencies as debt collection centers based on their performance in collecting delinquent debts, and may withdraw such designations. Referrals to debt collection centers shall be at the discretion of, and for a time period acceptable to, the Secretary. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

(e) GSA will transfer to the Secretary any debt that has been delinquent for a

period of 180 days or more so the Secretary may take appropriate action to collect the debt or terminate collection action. *See* 31 CFR 285.12 (Transfer of Debts to Treasury for Collection). This requirement does not apply to any debt that—

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sale program;

(3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary;

(4) Is at a debt collection center for a period of time acceptable to the Secretary (*see* paragraph (d) of this section);

(5) Will be collected under internal offset procedures within three years after the debt first became delinquent;

(6) Is exempt from this requirement based on a determination by the Secretary that exemption for a certain class of debt is in the best interest of the United States. GSA may request the Secretary to exempt specific classes of debts;

(7) Is in bankruptcy (*see* § 105–55.010(h));

(8) Involves a deceased debtor;

(9) Is owed to GSA by a foreign government; or

(10) Is in an administrative appeals process, until the process is complete and the amount due is set.

(f) Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and will be added to the debt as an administrative cost (*see* § 105–55.016).

§ 105–55.010 Demand for payment.

(a) Written demand, as described in paragraph (b) of this section, will be made promptly upon a debtor of the United States in terms informing the debtor of the consequences of failing to cooperate with the General Services Administration (GSA) to resolve the debt. The specific content, timing, and number of demand letters (usually no more than three, thirty days apart) will depend upon the type and amount of the debt and the debtor's response, if any, to GSA's letters, telephone calls, electronic mail (e-mail) or Internet inquiries. In determining the timing of the demand letter(s), GSA will give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with § 105–55.031. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) Demand letters will inform the debtor—

(1) The basis and the amount of the indebtedness and the rights, if any, the debtor may have to seek review within GSA (*see* § 105–55.011(e));

(2) The applicable standards for imposing any interest, penalties, or administrative costs (see § 105–55.016);

(3) The date by which payment should be made to avoid late charges (*i.e.*, interest, penalties, and administrative costs) and enforced collection, which generally will not be more than 30 days from the date the demand letter is mailed or hand-delivered; and

(4) The name, address, and phone number of a contact person or office within GSA.

(c) GSA will exercise care to ensure that demand letters are mailed or hand-delivered on the same day they are dated. For the purposes of written demand, notification by electronic mail (e-mail) and/or Internet delivery is considered a form of written demand notice. There is no prescribed format for demand letters. GSA will utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(d) GSA may include in demand letters such items as the willingness to discuss alternative methods of payment; Agency policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; Agency remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days will be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) GSA will respond promptly to communications from debtors, within 30 days whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if GSA determines to pursue, or is required to pursue, offset, the procedures applicable to offset will be followed (*see* § 105–55.011). The availability of funds or money for debt satisfaction by offset and GSA's determination to pursue collection by offset will release the Agency from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, GSA will advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification will comply with Executive Order 12988 (3 CFR, 1996 Comp. pp. 157–163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document.

(h) When GSA learns a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the Agency will ascertain the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the Agency determines the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor will stop immediately.

(1) A proof of claim will be filed in most cases with the bankruptcy court or the Trustee. GSA will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If GSA is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, GSA will determine whether its payments to the debtor and payments of other agencies available for offset may be frozen by the Agency until relief from the automatic stay can be obtained from the bankruptcy court. GSA also will determine whether recoupment is available.

§ 105–55.011 Collection by administrative offset.

(a) *Scope.* (1) The term ''administrative offset'' has the meaning provided in 31 U.S.C. 3701(a)(1).

(2) This section does not apply to—

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (*see* 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code

(see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the General Services Administration's (GSA's) right to collect the debt first accrued, unless facts material to GSA's right to collect the debt were not known and could not reasonably have been known by the official or officials of GSA who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, GSA will ascertain the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) GSA is required to refer past due, legally enforceable non-tax debts that are over 180 days delinquent to the Secretary for collection by centralized administrative offset. Debts that are less than 180 days delinquent also may be referred to the Secretary for this purpose. *See* paragraph (b)(5) of this section for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to the Secretary as described in paragraph (b)(1) of this section will be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Secretary. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice will include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of GSA as the creditor agency requesting the offset, and a contact point within GSA who will respond to questions regarding the offset.

(4)(i) Offsets may be initiated only after the debtor—

(A) Has been sent written notice of the type and amount of the debt, the intention of GSA to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716(c)(7); and

(B) The debtor has been given—

(*1*) The opportunity to inspect and copy Agency records related to the debt;

(*2*) The opportunity for a review within GSA of the determination of indebtedness (*see* paragraph (e) of this section); and

(*3*) The opportunity to make a written agreement to repay the debt.

(ii) The procedures set forth in paragraph (b)(4)(i) of this section may be omitted when—

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney,* 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, GSA first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, GSA will give the debtor such notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed to the Government.

(iii) When GSA previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (*see, e.g.*, § 105–55.010), the Agency need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) When referring delinquent debts to the Secretary, GSA will certify, in a form acceptable to the Secretary, that—

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) GSA has complied with all due process requirements under 31 U.S.C. 3716(a) and Agency regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the Administrator. Also, the Secretary may exempt other classes of payments from centralized offset upon the written request of the Administrator.

(7) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget. *See* 31 CFR 285.4.

(8) In accordance with 31 U.S.C. 3716(f), the Secretary may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from GSA that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that GSA conducts, at the Agency's discretion, internally or in cooperation with another agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable non-tax delinquent debts may be collected through non-centralized administrative offset. In these cases, GSA may make a

request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for GSA to request the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

(2) Such offsets will occur only after—

(i) The debtor has been provided due process as set forth in paragraph (b)(4) of this section; and

(ii) The payment authorizing agency has received written certification from GSA that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that GSA has fully complied with its regulations concerning administrative offset.

(3) Payment authorizing agencies will comply with offset requests by GSA to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law.

(4) When collecting multiple debts by non-centralized administrative offset, GSA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (b)(4) of this section, GSA may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(e) *Review requirements.* (1) A debtor may seek review of a debt by sending a signed and dated petition for review to the official named in the demand letter. A copy of the petition must also be sent to the GSA Board of Contract Appeals (GSBCA) at the address indicated in paragraph (e)(6) of this section.

(2) For purposes of this section, whenever GSA is required to afford a debtor a review within the Agency, the hearing official will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the hearing official determines that the question of the indebtedness cannot be resolved by review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(3) Witnesses will be asked to testify under oath or affirmation, and a written transcript of the hearing will be kept and made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701–706. Arrangements for the taking of the transcript will be made by the hearing official, and all charges associated with the taking of the transcript will be the responsibility of GSA.

(4) In those cases when an oral hearing is not required by this section, the hearing official will accord the debtor a ''paper hearing,'' that is, a determination of the request for reconsideration based upon a review of the written record.

(5) Hearings will be conducted by a Board Judge of the GSBCA. GSA must provide proof that a valid non-tax debt exists, and the debtor must provide evidence that no debt exists or that the amount of the debt is incorrect.

(6) If an oral hearing is provided, the debtor may choose to have it conducted in the hearing official's office located at GSA Central Office, 1800 F St., NW., Washington, DC 20405, at another location designated by the hearing official, or may choose a hearing by telephone. All personal and travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(7) If the debtor is an employee of GSA, the employee may represent himself or herself or may be represented by another person of his or her choice at the hearing. GSA will not compensate the employee for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

(8) A written decision will be issued by the hearing official no later than 60 days from the date the petition for review is received by GSA. The decision will state the—

(i) Facts supporting the nature and origin of the debt;

(ii) Hearing officials analysis, findings, and conclusions as to the debtor's and/or GSA's grounds;

(iii) Amount and validity of the debt; and

(iv) Repayment schedule, if applicable.

(9) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(f) *Waiver requirements.* (1) Under certain circumstances, a waiver of a claim against an employee of GSA arising out of an erroneous payment of pay, allowances, travel, transportation, or relocation expenses and allowances may be granted in whole or in part.

(2) GSA procedures for waiving a claim of erroneous payment of pay and allowances can be found in GSA Order CFO 4200.1, ''Waiver of Claims for Overpayment of Pay and Allowances''.

(3) GSA will follow the procedures of 5 U.S.C. 5584 when considering a request for waiver of erroneous payment of travel, transportation, or relocation expenses and allowances.

§ 105–55.012 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) Subject to the provisions of paragraph (b) of this section, the General Services Administration (GSA) may contract with private collection contractors, as defined in 31 U.S.C. 3701(f), to recover delinquent debts provided that—

(1) GSA retain the authority to resolve disputes, compromise debts, suspend or terminate collection activity, and refer debts for litigation;

(2) The private collection contractor is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless GSA has granted such authority prior to the offer;

(3) The contract provides that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) GSA will use Governmentwide debt collection contracts to obtain debt collection services provided by private collection contractors. However, GSA may refer debts to private collection contractors pursuant to a contract

between the Agency and the private collection contractor only if such debts are not subject to the requirement to transfer debts to Treasury for debt collection. *See* 31 U.S.C. 3711(g); 31 CFR 285.12(e).

(c) GSA may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(b), or as otherwise permitted by law.

(d) GSA may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets.

(e) GSA may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(b), such contracts may provide that the fee a contractor charges the Agency for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

§ 105–55.013 Suspension or revocation of eligibility for loans and loan guaranties, licenses, permits, or privileges.

(a) Unless waived by the Administrator, the General Services Administration (GSA) will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a non-tax debt owed to a Federal agency. This prohibition does not apply to disaster loans. The authority to waive the application of this section may be delegated to the Chief Financial Officer and re-delegated only to the Deputy Chief Financial Officer of GSA. GSA may extend credit after the delinquency has been resolved. The Secretary may exempt classes of debts from this prohibition and has prescribed standards defining when a ''delinquency'' is ''resolved'' for purposes of this prohibition. *See* 31 CFR 285.13.

(b) In non-bankruptcy cases, GSA, when seeking the collection of statutory penalties, forfeitures, or other types of claims, will consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with GSA regulations or governing procedures. The debtor will be advised in GSA's written demand for payment of the Agency's ability to suspend or revoke licenses, permits, or privileges. If GSA makes, guarantees, insures, acquires, or participates in loans, the Agency will consider suspending or disqualifying any lender, contractor, or broker from doing further business with the Agency or engaging in programs sponsored by the Agency if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 will be reported to the Treasury. The Treasury will forward notification to all interested agencies that a surety's certificate of authority to do business with the Government has been revoked by the Treasury.

(c) The suspension or revocation of licenses, permits, or privileges also may extend to GSA programs or activities administered by the states on behalf of GSA, to the extent they affect GSA's ability to collect money or funds owed by debtors.

(d) In bankruptcy cases, before advising the debtor of GSA's intention to suspend or revoke licenses, permits, or privileges, the Agency will ascertain the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 105–55.014 Liquidation of collateral.

(a) The General Services Administration (GSA) will liquidate security or collateral through the exercise of a power of sale in the security instrument or a non-judicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When GSA learns a bankruptcy petition has been filed with respect to a debtor, the Agency will ascertain the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 105–55.015 Collection in installments.

(a) Whenever feasible, the General Services Administration (GSA) will collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, GSA may accept payment in regular installments. GSA may obtain financial statements from debtors who represent they are unable to pay in one lump sum and independently verify such representations whenever possible (*see* § 105–55.020(g)). When GSA agrees to accept payments in regular installments, a legally enforceable written agreement from the debtor will be obtained specifying all of the terms of the arrangement and containing a provision accelerating the debt in the event of default. If the debtor's financial statement discloses the ownership of assets which are free and clear of liens or security interests, or assets in which the debtor owns an equity, the debtor may be asked to secure the payment of an installment note by executing a Security Agreement and Financing Statement transferring to the United States a security interest in the asset until the debt is paid.

(b) The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in three years or less, unless circumstances warrant a longer period.

(c) Security for deferred payments may be obtained in appropriate cases. GSA may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the Agency's option.

§ 105–55.016 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, the General Services Administration (GSA) will charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. GSA will send by U.S. mail, overnight delivery service, or hand-delivery a written notice to the debtor, at the debtor's most recent address available to the Agency, explaining the Agency's requirements concerning these charges, except where these requirements are included in a contractual or repayment agreement. These charges will continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) GSA will charge interest on debts owed the United States as follows:

(1) Interest will accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged will be the rate established annually by the Secretary in accordance with 31 U.S.C. 3717(a)(1). Pursuant to 31 U.S.C. 3717, GSA may charge a higher rate of interest if it is reasonably determined that a higher rate is necessary to protect the rights of the United States. GSA will document the reason(s) for a

determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, will remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, GSA may require payment of interest at a new rate that reflects the Current Value of Funds Rate (CVFR) at the time the new agreement is executed. Interest will not be compounded, that is, interest will not be charged on interest, penalties, or administrative costs required by this section. If a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement will be added to the principal under the new repayment agreement.

(c) GSA will assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs will be based on actual costs incurred or upon estimated costs as determined by the Agency.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, GSA will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge will accrue from the date of delinquency.

(e) GSA may increase an ''administrative debt'' by the cost of living adjustment in lieu of charging interest and penalties under this section. ''Administrative debt'' includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts will be computed annually. GSA will use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by GSA will be applied first to outstanding penalties, second to administrative charges, third to interest, and last to principal.

(g) GSA will waive the collection of interest, penalty and administrative charges imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. GSA may extend this 30-day period on a case-by-case basis. In addition, GSA may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if the Agency determines that collection of these charges resulted from Agency error, is against equity and good conscience, or is not in the best interest of the United States.

(h) Unless a statute or regulation specifically prohibits collection, interest, penalties and administrative costs will continue to accrue for periods during which collection activity has been suspended pending Agency review or waiver consideration.

(i) GSA is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law.

§ 105–55.017 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or other authority, the General Services Administration (GSA) may send a request to the Secretary (or designee) to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) GSA is authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 105–55.018 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, to the extent they are authorized under some other statute or the common law.

(b) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 will be determined, collected, compromised, terminated or settled in accordance with regulation published under the authority of 31 U.S.C. 3726 (*see* 41 CFR part 101–41, administered by the Director, Office of Transportation Audits) and are otherwise exempted from this part.

§ 105–55.019 Compromise of claims.

(a) The standards set forth in this section apply to the compromise of debts pursuant to 31 U.S.C. 3711. The General Services Administration (GSA) may exercise such compromise authority for debts arising out of activities of, or referred or transferred for collection services to, the Agency when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000 or any higher amount authorized by the Attorney General. The Administrator may designate other GSA officials to exercise the authorities in this section.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice. GSA will evaluate the compromise offer, using the factors set forth in § 105–55.020. If an offer to compromise any debt in excess of $100,000 is acceptable to the Agency, GSA will refer the debt to the Civil Division or other appropriate litigating division in the Department of Justice using a Claims Collection Litigation Report. The referral will include appropriate financial information and a recommendation for the acceptance of the compromise offer. Justice Department approval is not required if GSA rejects a compromise offer.

§ 105–55.020 Bases for compromise.

(a) The General Services Administration (GSA) may compromise a debt if the full amount cannot be collected because—

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information.

(2) GSA is unable to collect the debt in full within a reasonable time by enforced collection proceedings.

(3) The cost of collecting the debt does not justify the enforced collection of the full amount.

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) In determining the debtor's inability to pay, GSA will consider relevant factors such as the following:

(1) Age and health of the debtor.

(2) Present and potential income.

(3) Inheritance prospects.

(4) The possibility that assets have been concealed or improperly transferred by the debtor.

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) GSA will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. GSA will consider the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. GSA also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise effected under this section will be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases will fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, GSA will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412 that may be imposed against the Government if it is unsuccessful in litigation.

(e) GSA may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collection justifies enforced collection of the full amount, GSA will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) GSA generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, GSA will obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, GSA will obtain security for repayment in the manner set forth in § 105–55.015.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, GSA may obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses. GSA also may obtain credit reports or other financial information to assess compromise offers. GSA may use their own financial information form or may request suitable forms from the Department of Justice or the local United States Attorney's Office.

§ 105–55.021 Enforcement policy.

Pursuant to this section, the General Services Administration may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if the Agency's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by the Agency's acceptance of the sum to be agreed upon.

§ 105–55.022 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, the General Services Administration (GSA) may pursue collection activity against all debtors, as appropriate. GSA will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible.

(b) GSA will ensure that a compromise agreement with one debtor does not release the Agency's claim against the remaining debtors. The amount of a compromise with one debtor will not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 105–55.023 Further review of compromise offers.

If the General Services Administration (GSA) is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the Agency's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in the Department of Justice (DOJ), using a Claims Collection Litigation Report accompanied by supporting data and particulars concerning the debt. DOJ may act upon such an offer or return it to GSA with instructions or advice.

§ 105–55.024 Consideration of tax consequences to the Government.

In negotiating a compromise, the General Services Administration (GSA) may consider the tax consequences to the Government. In particular, GSA may consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on discharge of indebtedness reporting requirements see § 105–55.030.

§ 105–55.025 Mutual releases of the debtor and the Government.

In all appropriate instances, a compromise that is accepted by the General Services Administration may be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

§ 105–55.026 Suspending or terminating collection activity.

(a) The standards set forth in §§ 105–55.027 and 105–55.028 apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the

Department of Justice (DOJ) for litigation, the General Services Administration (GSA) may suspend or terminate collection under this part with respect to debts arising out of activities of, or referred or transferred for collection services to, the Agency.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with DOJ. If GSA believes suspension or termination of any debt in excess of $100,000 may be appropriate, the Agency will refer the debt to the Civil Division or other appropriate litigating division in DOJ, using the Claims Collection Litigation Report. The referral will specify the reasons for the Agency's recommendation. If, prior to referral to DOJ, GSA determines a debt is plainly erroneous or clearly without legal merit, the Agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence.

§ 105–55.027 Suspension of collection activity.

(a) The General Services Administration (GSA) may suspend collection activity on a debt when—

(1) The Agency cannot locate the debtor;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, GSA may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and—

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c)(1) GSA will suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt if the statute under which the request is sought prohibits the Agency from collecting the debt during that time.

(2) If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, GSA will use discretion, on a case-by-case basis, to suspend collection. Further, GSA ordinarily will suspend collection action upon a request for waiver or review if the Agency is prohibited by statute or regulation from issuing a refund of amounts collected prior to Agency consideration of the debtor's request. However, GSA will not suspend collection when the Agency determines the request for waiver or review is frivolous or was made primarily to delay collection.

(d) When GSA learns a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt will be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the Agency can clearly establish the automatic stay has been lifted or is no longer in effect. GSA will, if legally permitted, take the necessary legal steps to ensure no funds or money are paid by the Agency to the debtor until relief from the automatic stay is obtained.

§ 105–55.028 Termination of collection activity.

(a) The General Services Administration (GSA) may terminate collection activity when—

(1) The Agency is unable to collect any substantial amount through its own efforts or through the efforts of others;

(2) The Agency is unable to locate the debtor;

(3) Costs of collection are anticipated to exceed the amount recoverable;

(4) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(5) The debt cannot be substantiated; or

(6) The debt against the debtor has been discharged in bankruptcy.

(b) Before terminating collection activity, GSA will pursue all appropriate means of collection and determine, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude GSA from retaining a record of the account for purposes of—

(1) Selling the debt, if the Secretary determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants of loans and loan guaranties, licenses, permits, or privileges for prior indebtedness.

(c) Generally, GSA will terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. GSA may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, the claims of GSA that it is a known creditor of a debtor may survive a discharge if the Agency did not receive formal notice of the proceedings.

§ 105–55.029 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, the General Services Administration may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

§ 105–55.030 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), the General Services Administration (GSA) will take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury, Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part. When GSA discharges a debt in full or in part, further collection action is prohibited. Therefore, GSA will make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, GSA will terminate debt collection action.

(b) Section 3711(i), Title 31, United States Code, requires GSA to sell a delinquent non-tax debt upon termination of collection action if the Secretary determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), GSA may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of a debt of more than $600, GSA must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. GSA may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on the Agency's behalf.

(d) When discharging a debt, GSA will request the GSA Office of General Counsel to release any liens of record securing the debt.

§ 105–55.031 Prompt referral to the Department of Justice.

(a) The General Services Administration (GSA) will promptly refer to the Department of Justice (DOJ) for litigation debts on which aggressive collection activity has been taken in accordance with § 105–55.009 and that cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with §§ 105–55.027 and 105–55.028. GSA may refer those debts arising out of activities of, or referred or transferred for collection services to, the Agency. Debts for which the principal amount is over $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, will be referred to the Civil Division or other division responsible for litigating such debts at DOJ, Washington, DC. Debts for which the principal amount is $1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, will be referred to DOJ's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report instructions. Debts will be referred as early as possible, consistent with aggressive GSA collection activity and the observance of the standards contained in this part, and, in any event, well within the period for initiating timely lawsuits against the debtors. GSA will make every effort to refer delinquent debts to DOJ for litigation within one year of the date such debts last became delinquent. In the case of guaranteed or insured loans, GSA will make every effort to refer these delinquent debts to DOJ for litigation within one year from the date the loan was presented to the Agency for payment or re-insurance.

(b) DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. GSA, as the referring agency, will immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to DOJ. GSA will advise DOJ of the collection activities which have been utilized to date, and their result. GSA will refrain from having any contact with the debtor and will direct all debtor inquiries concerning the debt to DOJ, except as otherwise agreed between GSA and DOJ. GSA will immediately notify DOJ of any payments credited by the Agency to the debtor's account after referral of a debt under this section. DOJ will notify GSA of any payments it receives from the debtor.

§ 105–55.032 Claims Collection Litigation Report.

(a) Unless excepted by the Department of Justice (DOJ), the General Services Administration (GSA) will complete the Claims Collection Litigation Report (CCLR) (*see* § 105–55.019(b)), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to DOJ for litigation. GSA will complete all sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) GSA will indicate clearly on the CCLR the actions DOJ should take with respect to the referred claim. The CCLR permits the Agency to indicate specifically any of a number of litigative activities which DOJ may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and deficiency judgment.

(c) GSA also will use the CCLR to refer claims to DOJ to obtain approval of any proposals to compromise the claims or to suspend or terminate Agency collection activity.

§ 105–55.033 Preservation of evidence.

The General Services Administration (GSA) will take care to preserve all files and records that may be needed by the Department of Justice (DOJ) to prove their claims in court. GSA ordinarily will include certified copies of the documents that form the basis for the claim in the packages referring their claims to DOJ for litigation. GSA will provide originals of such documents immediately upon request by DOJ.

§ 105–55.034 Minimum amount of referrals to the Department of Justice.

(a) The General Services Administration (GSA) will not refer for litigation claims of less than $2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. The Department of Justice (DOJ) will notify GSA if the Attorney General changes this minimum amount.

(b) GSA will not refer claims of less than the minimum amount unless—

(1) Litigation to collect such smaller claims is important to ensure compliance with the Agency's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to GSA for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(c) GSA will consult with the Financial Litigation Staff of the Executive Office for United States Attorneys in DOJ prior to referring claims valued at less than the minimum amount.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–56

[GSPMR Amendment 2003–02; GSPMR Case 2003–105–3]

RIN 3090–AH86

Salary Offset for Indebtedness of Federal Employees to the United States

AGENCY: Office of Finance, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending its regulations to implement the salary offset procedures used to collect debts that are owed to the United States by Federal employees. The change conforms GSA regulations to the legislative changes enacted in the Debt

Collection Improvement Act of 1996 and the amended procedures presented in the Federal Claims Collection Standards jointly issued by the Department of the Treasury (Treasury) and the Department of Justice (DoJ). The change allows GSA to improve its collection of debts due the United States from Federal employees.

DATES: *Effective date:* December 10, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael J. Kosar, (202) 501–2029. Please cite GSPMR Amendment 2003–02, GSPMR case 2003–105–3.

SUPPLEMENTARY INFORMATION:

A. Background

GSA currently has rules for collecting unpaid debts through salary offset under the provisions of the Debt Collection Act of 1982, the Federal Claims Collection Standards (FCCS) of 1966, and other authorities governing the collection of Federal debts. The change incorporates changes that are presented in the amended FCCS issued jointly by Treasury and DoJ, and the Debt Collection Improvement Act of 1996 (DCIA).

A new subpart B, Centralized Salary Offset Procedures (CSO)—GSA as Creditor Agency, is added to include procedures for notifying Treasury of delinquent Federal employee debtors from another agency who owe debts to GSA. A new subpart C, Centralized Salary Offset Procedures (CSO)—GSA as Paying Agency, is added to include procedures for offsetting debts of a GSA employee or a cross-serviced agency employee that owes a debt to another agency. The DCIA of 1996 requires Federal agencies to match their delinquent debtor records with records of Federal employees, at least annually, to identify Federal employees who owe delinquent debt to the United States. This part implements the requirement under 5 U.S.C. 5514(a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent non-tax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government. This part specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this part, delinquent debt records consist of the debt information submitted to Treasury for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6).

Discussion of Comments

In response to its Notice of Proposed Rule (NPR) concerning Salary Offset for Indebtedness of Federal Employees to the United States (68 FR 41093, July 10, 2003), GSA received internal comments from its National Payroll Center (NPC). A review of the comments is provided in the following comment analysis, including a discussion of GSA's determination whether to incorporate specific suggestions in the final rule. The comment analysis is organized by reference to the paragraph in the NPR.

NPR Sec. 105–56.003, Definitions. The final rule incorporates one commenter's suggestion to list the definitions in alphabetical order.

NPR Sec. 105–56.003(j) and NPR Sec. 105–56.015(m), Definitions. One commenter suggested inserting the word Administration after General Services so the definition reads ''Administrator of General Services Administration''. The commenter's suggestion and the NPR definitions have the same meaning, however, the NPR definition is considered the more grammatically correct. No change is made to the final rule.

NPR Sec. 105–56.005(b), Employee response. One commenter suggested NPR Sec. 105–56.005(b) specify where an employee should submit their waiver request since the other lettered paragraphs specify a point of contact. They recommend that employees send their signed waiver request to the GSA National Payroll Center (NPC). This suggestion is incorporated in the final rule.

B. Executive Order 12866

GSA has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866, and accordingly, this regulation has not been reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for GSA to streamline debt collection regulations, or (2) reflects the statutory language contained in the DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

D. Executive Order 13132

This regulation will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

G. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 41 CFR Part 105–56

Claims, Salary offset, Payments, Administrative practice and procedure, Hearings, Appeals procedures, Debts, Debt collection, Wages, Government employees.

Dated: December 2, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 105 as follows:

PART 105–56—SALARY OFFSET FOR INDEBTEDNESS OF FEDERAL EMPLOYEES TO THE UNITED STATES

■ 1. Revise part 105–56 to read as follows:

PART 105–56—SALARY OFFSET FOR INDEBTEDNESS OF FEDERAL EMPLOYEES TO THE UNITED STATES

Subpart A—Salary Offset of General Services Administration Employees

Sec.

Subpart B—Centralized Salary Offset (CSO) Procedures—GSA as Creditor Agency

Subpart C—Centralized Salary Offset (CSO) Procedures—GSA as Paying Agency

Authority: 5 U.S.C. 5514; 31 U.S.C. 3711; 31 U.S.C. 3716; 5 CFR part 550, subpart K; 31 CFR part 5; 31 CFR 285.7; 31 CFR parts 900–904.

Subpart A—Salary Offset of General Services Administration Employees

§ 105–56.001 Scope.

(a) This subpart covers internal GSA collections under 5 U.S.C. 5514. It applies when certain debts to the United States are recovered by administrative offset from the disposable pay of a GSA employee or a cross-serviced agency employee, except in situations where the employee consents to the recovery.

(b) The collection of any amount under this subpart will be in accordance with the standards promulgated pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3701 *et seq.*, and the Federal Claims Collection Standards, 31 CFR parts 900 through 904 as amended, or in accordance with any other statutory authority for the collection of claims of the United States or any Federal agency.

§ 105–56.002 Excluded debts or claims.

This subpart does not apply to the following:

(a) Debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States.

(b) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute. Debt collection procedures under other statutory authorities, however, must be consistent with the provisions of the Federal Claims Collection Standards, defined at paragraph (h) of § 105–56.003.

(c) An employee election of coverage or of a change of coverage under a Federal benefits program that requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods, the procedures under § 105–56.004 of this subpart will apply.

(d) Routine adjustment in pay or allowances that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of the adjustment, or as soon after as possible, the employee is provided written notice of the nature and amount of the adjustment.

(e) Any adjustment to collect a debt amounting to $50 or less, if, at the time of the adjustment, or as soon after as possible, the employee is given written notice of the nature and amount of the adjustment and a point of contact for contesting the adjustment.

(f) Debts or claims arising from the accrual of unpaid Health Benefits Insurance (HBI) premiums as the result of an employee's election to continue health insurance coverage during periods of leave without pay (LWOP), or when pay is insufficient to cover premiums. Debt collection procedures for unpaid HBI are covered under 5 CFR part 890, Subpart E.

§ 105–56.003 Definitions.

The following definitions apply to this subpart:

(a) *Administrative offset,* as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(b) *Agency* means a department, agency or sub-agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal government, including government corporations.

(c) *Business day* means Monday through Friday, excluding Federal legal holidays. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

(d) *Creditor agency* means any agency that is owed a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(e) *Cross-serviced agency* means an arrangement between GSA and another agency whereby GSA provides financial support services to the other agency on a reimbursable basis. Financial support services can range from simply providing computer and software timesharing services to full-service administrative processing.

(f) *Disposable pay* means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs, including contributions to the Thrift Savings Plan (TSP); premiums for life (excluding amounts deducted for supplemental coverage) and health insurance benefits; Internal Revenue Service (IRS) tax levies; and such other deductions that may be required by law to be withheld.

(g) *Employee* means any individual employed by GSA or a cross-serviced agency of the executive, legislative, or judicial branches of the Federal Government, including Government corporations.

(h) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the Department of the Treasury at 31 CFR parts 900 through 904.

(i) *Financial hardship* means an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents.

(j) For the purposes of the standards in this subpart, unless otherwise stated, the term ''Administrator'' refers to the

Administrator of General Services or the Administrator's delegate.

(k) For the purposes of the standards in this subpart, the terms ''claim'' and ''debt'' are synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by GSA to be due the United States from an employee of GSA or a cross-serviced agency from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources, including debt administered by a third party as an agent for the Federal Government. For the purposes of administrative offset under 31 U.S.C. 3716, the terms ''claim'' and ''debt'' include an amount of money, funds, or property owed by an employee to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(l) For the purposes of the standards in this subpart, unless otherwise stated, the terms ''GSA'' and ''Agency'' are synonymous and interchangeable.

(m) *Hearing official* means a Board Judge of the GSA Board of Contract Appeals (GSBCA).

(n) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

(o) *Pre-offset hearing* means a review of the documentary evidence concerning the existence and/or amount of a debt, and/or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this subpart. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

(p) *Program official* means a supervisor or management official of the employee's service, staff office, cross-serviced agency, or other designated Agency officials.

(q) *Reconsideration* means a request by the employee to have a secondary review by GSA of the existence and/or amount of the debt, and/or the proposed offset schedule.

(r) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(s) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt or debt-related charge as permitted or required by law.

§ 105–56.004 Pre-offset notice.

An employee must be given written notice from the appropriate program official at least 30 days in advance of initiating a deduction from disposable pay informing him or her of—

(a) The nature, origin and amount of the indebtedness determined by GSA or a cross-serviced agency to be due;

(b) The intention of GSA to initiate proceedings to collect the debt through deductions from the employee's current disposable pay and other eligible payments;

(c) The amount (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay), frequency, proposed beginning date, and duration of the intended deductions;

(d) GSA's policy concerning how interest, penalties, and administrative costs are assessed (*see* 41 CFR part 105–55.017), including a statement that such assessments will be made unless excused under 31 U.S.C. 3717(h) and 31 CFR 901.9(g) and (h);

(e) The employee's right to inspect and copy GSA records relating to the debt, if records of the debt are not attached to the notice, or if the employee or his or her representative cannot personally inspect the records, the right to receive a copy of such records. Any costs associated with copying the records for the debtor will be borne by the debtor. The debtor must give a minimum of three (3) business days notice in advance to GSA of the date on which he or she intends to inspect and copy the records involved;

(f) A demand for repayment providing for an opportunity, under terms agreeable to GSA, for the employee to establish a schedule for the voluntary repayment of the debt by offset or to enter into a written repayment agreement of the debt in lieu of offset;

(g) The employee's right to request a waiver (*see* § 105–56.005(b) of this subpart);

(h) The employee's right to request reconsideration by the Agency of the existence and/or amount of the debt, and/or the proposed offset schedule;

(i) The employee's right to a pre-offset hearing conducted by a hearing official, arranged by the appropriate program official, if a request is filed as prescribed by § 105–56.006 of this subpart;

(j) The method and time period for requesting a hearing, including a statement that the timely filing of a request for hearing will stay the commencement of collection proceedings;

(k) The issuance of a final decision on the hearing, if requested, at the earliest practicable date, but no later than 60 days after the request for hearing is filed, unless the employee requests and the hearing official grants a delay in the proceedings;

(l) The risk that any knowingly false or frivolous statements, representations, or evidence may subject the employee to—

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(m) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(n) The employee's right to a prompt refund if amounts paid or deducted are later waived or found not owed, unless otherwise provided by law (*see* § 105–56.012 of this subpart);

(o) The specific address to which all correspondence must be directed regarding the debt.

§ 105–56.005 Employee response.

(a) *Voluntary repayment agreement.* An employee may submit a request to the appropriate program official who signed the pre-offset notice to enter into a written repayment agreement of the debt in lieu of offset. The request must be made within 7 days of receipt of notice under § 105–56.004 of this subpart. The agreement must be in writing, signed by both the employee and the appropriate program official making the notice, and a signed copy must be sent to the appropriate Finance Center serving the program activity. Acceptance of such an agreement is discretionary with the Agency. An employee who enters into such an agreement may, nevertheless, seek a waiver under paragraph (b) of this section.

(b) *Waiver.* An employee may submit a signed waiver request of overpayment of pay or allowances (*e.g.*, 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716) to the GSA National Payroll Center (NPC). When an employee requests waiver

consideration, further collection on the debt may be suspended until a final administrative decision is made on the waiver request. During the period of any suspension, interest, penalties and administrative charges may be held in abeyance. GSA will not duplicate, for purposes of salary offset, any of the notices/procedures already provided the debtor prior to a request for waiver.

(c) *Reconsideration.* (1) An employee may seek a reconsideration of GSA's determination regarding the existence and/or amount of the debt. The request must be submitted to the appropriate program official indicated in the pre-offset notice, within 7 days of receipt of notice under § 105–56.004 of this subpart. Within 20 days of receipt of this notice, the employee must submit a detailed statement of reasons for reconsideration that must be accompanied by supporting documentation.

(2) An employee may request a reconsideration of the proposed offset schedule. The request must be submitted to the appropriate program official indicated in the pre-offset notice, within 7 days of receipt of notice under § 105–56.004 of this subpart. Within 20 days of receipt of this notice, the employee must submit an alternative repayment schedule accompanied by a detailed statement, supported by documentation, evidencing financial hardship resulting from GSA's proposed schedule. Acceptance of the request is at GSA's discretion. GSA will notify the employee in writing of its decision concerning the request to reduce the rate of an involuntary deduction.

§ 105–56.006 Petition for pre-offset hearing.

(a) The employee may request a pre-offset hearing by filing a written petition with the appropriate program official indicated in the pre-offset notice, within 15 days of receipt of the written notice. The petition must state why the employee believes GSA's determination concerning the existence and/or amount of the debt is in error, set forth any objections to the involuntary repayment schedule, and, if the employee is seeking an oral hearing, set forth reasons for an oral hearing. The timely filing of a petition will suspend the commencement of collection proceedings.

(b) The employee's petition or statement must be signed and dated by the employee.

(c) Petitions for hearing made after the expiration of the 15-day period may be accepted if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit.

(d) If the employee timely requests a pre-offset hearing or the timeliness is waived, the appropriate program official must—

(1) Promptly notify the GSBCA and arrange for a hearing official (*see* § 105–56.003(m) of this subpart). The hearing official will notify the employee whether he or she may have an oral or a ''paper hearing,'' *i.e.*, a review on the written record (*see* 31 CFR 901.3(e)); and

(2) Provide the hearing official with a copy of all records on which the determination of the debt and any involuntary repayment schedule are based.

(e) If an oral hearing is to be held, the hearing official will notify the appropriate program official and the employee of the date, time, and location of the hearing. The debtor may choose to have the hearing conducted in the hearing official's office located at GSA Central Office, 1800 F St., NW., Washington, DC 20405, at another location designated by the hearing official, or by telephone. The debtor and any witnesses are responsible for any personal expenses incurred to arrive at a hearing official's office or other designated location (*see* § 105–56.007(c)). All telephonic charges incurred during a hearing will be the responsibility of GSA.

(f) If the employee later elects to have the hearing based only on the written submissions, notification must be given to the hearing official and the appropriate program official at least 3 days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause.

(g) If either party, without good cause as determined by the hearing official, does not appear at a scheduled oral hearing, the hearing official will make a determination on the claim which takes into account that party's position as presented in writing only.

§ 105–56.007 Pre-offset oral hearing.

(a) The Agency, represented by the appropriate program official or a representative of the Office of General Counsel, and the employee, and/or his or her representative, will explain their case in the form of an oral presentation with reference to the documentation submitted. The employee may testify on his or her own behalf, subject to cross-examination. Other witnesses may be called to testify when the hearing official determines the testimony to be relevant and not redundant. All witnesses will testify under oath, with the oath having been administered by the hearing official. A written transcript of the hearing will be kept and made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701–706. Arrangements for the taking of the transcript will be made by the hearing official, and all charges associated with the taking of the transcript will be the responsibility of GSA.

(b) The hearing official will—

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person of his or her choice at the hearing. GSA will not compensate the employee for representation expenses, including hourly fees for attorneys, travel expenses, and costs for reproducing documents.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing when doing so is in the best interests of the employee or the Agency.

(e) Oral hearings may be conducted by telephone at the request of the employee. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(f) The hearing official may request written submissions and documentation from the employee and the Agency, in addition to considering evidence offered at the hearing.

§ 105–56.008 Pre-offset paper hearing.

If a hearing is to be held only upon written submissions, the hearing official will issue a decision based upon the record and responses submitted by both the Agency and the employee. *See* § 105–56.006 of this subpart. If either party, without good cause as determined by the hearing official, does not provide written submissions and documentation requested by the hearing official, the hearing official will make a determination on the claim without reference to such submissions and documentation.

§ 105–56.009 Written decision.

(a) Within 60 days of the employee's filing of a petition for a pre-offset hearing, the hearing official will issue a written decision setting forth—

(1) The facts supporting the nature and origin of the debt;

(2) The hearing official's analysis, findings and conclusions as to the employee's or Agency's grounds;

(3) The amount and validity of the debt; and

(4) The repayment schedule, if applicable.

(b) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

§ 105–56.110 Deductions.

(a) *When deductions may begin.* Deductions may begin upon the issuance of an Agency decision on a request for reconsideration or waiver (except as provided in § 105–56.005(b) of this subpart) or the issuance of a decision in a pre-offset hearing. In no event will deductions begin sooner than thirty days from the date of the notice letter. If the employee filed a petition for hearing with the appropriate program official before the expiration of the period provided for in § 105–56.006 of this subpart, then deductions will begin after the hearing official has provided the employee with a hearing and the final written decision. The appropriate program official will coordinate with the National Payroll Center to begin offset in accordance with the final written decision.

(b) *Retired or separated employees.* If the employee retires, resigns, or is terminated before collection of the indebtedness is completed, the remaining indebtedness will be offset from any subsequent payments of any nature. If the debt cannot be satisfied from subsequent payments, then the debt will be collected according to the procedures for administrative offset pursuant to § 105–55.011 of this subpart.

(c) *Types of collection.* A debt may be collected in one lump sum or in installments. Collection will be by lump sum unless the employee is able to demonstrate to the program official who signed the notice letter that he or she is financially unable to pay in one lump sum. In these cases, collection will be by installment deductions. Involuntary deductions from pay may not exceed 15 percent of disposable pay.

(d) *Methods of collection.* If the debt cannot be collected in one lump sum, the debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and the appropriate program official agree to an alternative repayment schedule. The alternative arrangement must be in writing and signed by both the employee and the appropriate program official.

(1) *Installment deductions.* Installment deductions will be made over the shortest period possible. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. The installment payment normally will be sufficient in size and frequency to liquidate the debt in three (3) years or less, unless circumstances warrant a longer period. Installment payments of less than $100 per pay period will be accepted only in the most unusual circumstances.

(2) *Sources of deductions.* GSA will make salary deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

(e) *Non-Salary payments.* The receipt of collections from salary offsets does not preclude GSA from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent non-tax debt owed to the United States. GSA will pursue, when appropriate, such debt collection remedies separately or in conjunction with salary offset.

(f) *Interest, penalties and administrative costs.* Interest, penalties and administrative costs on debts under this subpart will be assessed according to the provisions of § 105–55.016 of this subpart.

§ 105–56.011 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 will not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 105–56.012 Refunds.

(a) GSA will promptly refund to the employee any amounts offset under these regulations when a debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation), or GSA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay or withheld from non-salary payments.

(b) Unless required by Federal law or contract, refunds under this subpart will not bear interest.

§ 105–56.013 Coordinating offset with another Federal agency.

GSA participates in the Centralized Salary Offset (CSO) program (*see* subparts B and C of this part). In those instances when CSO cannot be utilized (*i.e.*, when another agency does not participate in the program), the following procedures apply:

(a) *When GSA is the creditor agency.* When GSA is owed a debt by an employee of another agency, GSA will provide the paying agency with a written certification that the debtor owes GSA a debt and that GSA has complied with these regulations. This certification will include the amount and basis of the debt, the due date of the payment, or the beginning date of installment payments, if any.

(b) *When another agency is the creditor agency.* (1) GSA may use salary offset against one of its employees or cross-serviced agency employees who is indebted to another agency if requested to do so by that agency. Any such request must be accompanied by a certification from the requesting agency that the person owes the debt, the amount of the debt and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

(2) The creditor agency must advise GSA of the number of installments to be collected, the amount of each installment, and the beginning date of the first installment if it is not the next established pay period.

(3) If GSA receives an improperly completed request, the creditor agency will be requested to supply the required information before any salary offset begins.

(4) If the claim procedures in paragraph (b)(1) of this section have been properly completed, deductions will begin on the next established pay period unless a different period is requested by the creditor agency.

(5) GSA will not review the merits of the creditor agency's determinations with respect to the amount and/or validity of the debt as stated in the debt claim certification.

(6) If the employee begins separation action before GSA collects the total debt due the creditor agency, the following actions will be taken:

(i) When possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from GSA in accordance with 41 CFR part 105–55.011;

(ii) If the total amount of the debt cannot be recovered, GSA will certify the total amount collected to the creditor agency and the employee;

(iii) If GSA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, such

information will be provided to the creditor agency so a certified claim can be made against the payments.

(7) If the employee transfers to another Federal agency before GSA collects the total amount due the creditor agency, GSA will certify the total amount collected to the creditor agency and the employee. It is the responsibility of the creditor agency to ensure that collection action is resumed by the new employing agency.

Subpart B—Centralized Salary Offset (CSO) Procedures—GSA as Creditor Agency

§ 105–56.014 Purpose and scope.

(a) This subpart establishes procedures for the offset of Federal salary payments, through the Financial Management Service's (FMS) administrative offset program, to collect delinquent debts owed to the Federal Government. This process is known as centralized salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting salary offset and the procedures for requesting offsets directly from a paying agency. *See* 5 CFR parts 550.1101 through 550.1108.

(b) This subpart implements the requirement under 5 U.S.C. 5514 (a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent non-tax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government.

(c) This subpart specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this subpart, delinquent debt records consist of the debt information submitted to FMS for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6). Since GSA submits debts to FMS for purposes of administrative offset, the Agency is not required to submit duplicate information for purposes of centralized salary offset computer matching under 5 U.S.C. 5514(a)(1) and this subpart.

(d) An interagency consortium was established to implement centralized salary offset computer matching on a Governmentwide basis as required under 5 U.S.C. 5514(a)(1). Federal employee records consist of records of Federal salary payments disbursed by members of the consortium.

(e) The receipt of collections from salary offsets does not preclude GSA from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent non-tax debt owed to the United States. GSA will pursue, when appropriate, such debt collection remedies separately or in conjunction with salary offset.

§ 105–56.015 Definitions.

The following definitions apply to this subpart:

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

(b) *Agency* means a department, agency or sub-agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal government, including government corporations.

(c) *Centralized salary offset computer matching* means the computerized comparison of Federal employee records with delinquent debt records to identify Federal employees who owe such debts.

(d) *Consortium* means an interagency group established by the Secretary of the Treasury to implement centralized salary offset computer matching. The group includes all agencies that disburse Federal salary payments.

(e) *Creditor agency* means any agency that is owed a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(f) *Debt* means any amount of money, funds, or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, including debt administered by a third party acting as an agent for the Federal Government. For purposes of this subpart, the term ''debt'' does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

(g) *Delinquent debt record* means information about a past-due, legally enforceable debt, submitted by GSA to FMS for purposes of administrative offset (including salary offset) in accordance with the provisions of 31 U.S.C. 3716(c)(6) and applicable regulations. Debt information includes the amount and type of debt and the debtor's name, address, and taxpayer identifying number.

(h) *Disbursing official* means an officer or employee designated to disburse Federal salary payments. This includes all disbursing officials of Federal salary payments, including but not limited to, disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, any government corporation, and any disbursing official of the United States designated by the Secretary.

(i) *Disposable pay* means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs, including contributions to the Thrift Savings Plan (TSP); premiums for life (excluding amounts deducted for supplemental coverage) and health insurance benefits; Internal Revenue Service (IRS) tax levies; and such other deductions that are required by law to be withheld.

(j) *Federal employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves), employees of the United States Postal Service, and seasonal and temporary employees.

(k) *Federal employee records* means records of Federal salary payments that a paying agency has certified to a disbursing official for disbursement.

(l) *FMS* means the Financial Management Service, a bureau of the Department of the Treasury.

(m) For the purposes of the standards in this subpart, unless otherwise stated, the term ''Administrator'' refers to the Administrator of General Services or the Administrator's delegate.

(n) For the purposes of the standards in this subpart, unless otherwise stated, the terms ''GSA'' and ''Agency'' are synonymous and interchangeable.

(o) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

(p) *Paying agency* means the agency that employs the Federal employee who owes the debt and authorizes the payment of his or her current pay. A paying agency also includes an agency that performs payroll services on behalf of the employing agency.

(q) *Salary offset* means administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

(r) *Secretary* means the Secretary of the Treasury or his or her delegate.

(s) *Taxpayer identifying number* means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109).

For an individual, the taxpayer identifying number is the individual's social security number.

§ 105–56.016 GSA participation.

(a) As required under 5 U.S.C. 5514(a)(1), GSA must participate at least annually in centralized salary offset computer matching. To meet this requirement, GSA will notify FMS of all past-due, legally enforceable debts delinquent for more than 180 days for purposes of administrative offset, as required under 31 U.S.C. 3716(c)(6). Additionally, GSA may notify FMS of past-due, legally enforceable debts delinquent for less than 180 days for purposes of administrative offset.

(b) Prior to submitting a debt to FMS for purposes of collection by administrative offset, including salary offset, GSA will provide written certification to FMS that—

(1) The debt is past-due and legally enforceable in the amount submitted to FMS and that GSA will ensure that collections (other than collections through offset) are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after GSA's right of action accrues;

(3) GSA has complied with the provisions of 31 U.S.C. 3716 (administrative offset) and related regulations including, but not limited to, the provisions requiring that GSA provide the debtor with applicable notices and opportunities for a review of the debt; and

(4) GSA has complied with the provisions of 5 U.S.C. 5514 (salary offset) and related regulations including, but not limited to, the provisions requiring that GSA provide the debtor with applicable notices and opportunities for a hearing.

(c) FMS may waive the certification requirement set forth in paragraph (b)(4) of this section as a prerequisite to submitting the debt to FMS. If FMS waives the certification requirement, before an offset occurs, GSA will provide the Federal employee with the notices and opportunities for a hearing as required by 5 U.S.C. 5514 and applicable regulations, and will certify to FMS that the requirements of 5 U.S.C. 5514 and applicable regulations have been met.

(d) GSA will notify FMS immediately of any payments credited by GSA to the debtor's account, other than credits for amounts collected by offset, after submission of the debt to FMS. GSA will notify FMS once the debt is paid in its entirety. GSA will also notify FMS immediately of any change in the status of the legal enforceability of the debt, for example, if the Agency receives notice that the debtor has filed for bankruptcy protection.

§ 105–56.017 Centralized salary offset computer match.

(a) Delinquent debt records will be compared with Federal employee records maintained by members of the consortium or paying agencies. The records will be compared to identify Federal employees who owe delinquent debts for purposes of collecting the debt by administrative offset. A match will occur when the taxpayer identifying number and name of a Federal employee are the same as the taxpayer identifying number and name of a debtor.

(b) As authorized by the provisions of 31 U.S.C. 3716(f), FMS, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, as amended, for administrative offset, including salary offset, upon written certification by the Administrator, or the Administrator's delegate, that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p). GSA will provide certification in accordance with the provisions of § 105–56.016(b)(3) of this subpart.

§ 105–56.018 Salary offset.

When a match occurs and all other requirements for offset have been met, as required by the provisions of 31 U.S.C. 3716(c), the disbursing official will offset the Federal employee's salary payment to satisfy, in whole or part, the debt owed by the employee. Alternatively, the paying agency, on behalf of the disbursing official, may deduct the amount of the offset from an employee's disposable pay before the employee's salary payment is certified to a disbursing official for disbursement.

§ 105–56.019 Offset amount.

(a) The minimum dollar amount referred for offset under this subpart is $100.

(b) The amount offset from a salary payment under this subpart will be the lesser of—

(1) The amount of the debt, including any interest, penalties and administrative costs; or

(2) Up to 15 percent of the debtor's disposable pay.

(c) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and GSA.

(d) Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of GSA.

§ 105–56.020 Priorities.

(a) A levy pursuant to the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) takes precedence over other deductions under this subpart.

(b) When a salary payment may be reduced to collect more than one debt, amounts offset under this subpart will be applied to a debt only after amounts offset have been applied to satisfy past due child support debts assigned to a State pursuant to the Social Security Act under 42 U.S.C. 602(a)(26) or 671(a)(17).

§ 105–56.021 Notice.

(a) Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, will notify the Federal employee in writing of the date deductions from salary will commence and of the amount of such deductions.

(b)(1) When an offset occurs under this subpart, the disbursing official, or the paying agency on behalf of the disbursing official, will notify the Federal employee in writing that an offset has occurred including—

(i) A description of the payment and the amount of offset taken;

(ii) The identity of GSA as the creditor agency requesting the offset; and

(iii) A contact point within GSA that will handle concerns regarding the offset.

(2) The information described in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section does not need to be provided to the Federal employee when the offset occurs if such information was included in a prior notice from the disbursing official or paying agency.

(c) The disbursing official will advise GSA of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for GSA. The disbursing official will not advise GSA of the source of payment from which the amounts were collected.

§ 105–56.022 Fees.

Agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost for such services. In addition, FMS, or a paying agency acting on behalf of FMS, may charge a fee

sufficient to cover the full cost of implementing the administrative offset program. FMS may deduct the fees from amounts collected by offset or may bill GSA. Fees charged for offset will be based on actual administrative offsets completed and may be added to the debt as an administrative cost.

§ 105–56.023 Disposition of amounts collected.

(a) The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under § 105–56.022 of this subpart, to GSA.

(b) If an erroneous offset payment is made to GSA, the disbursing official will notify GSA that an erroneous offset payment has been made.

(1) The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to GSA; or

(2) Alternatively, upon the disbursing official's request, GSA will promptly return to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to GSA have been paid).

(i) The disbursing official and GSA will adjust the debtor records appropriately.

(ii) Unless required by Federal law or contract, refunds under this subpart will not bear interest.

Subpart C—Centralized Salary Offset (CSO) Procedures—GSA as Paying Agency

§ 105–56.024 Purpose and scope.

(a) This subpart establishes procedures for the offset of Federal salary payments, through the Financial Management Service's (FMS) administrative offset program, to collect delinquent debts owed to the Federal Government. This process is known as salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting salary offset and the procedures for requesting offsets directly from a paying agency. *See* 5 CFR parts 550.1101 through 550.1108.

(b) This subpart implements the requirement under 5 U.S.C. 5514(a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent non-tax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government.

(c) This subpart specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this subpart, delinquent debt records consist of the debt information submitted to FMS for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6).

(d) An interagency consortium was established to implement centralized salary offset computer matching on a Governmentwide basis as required under 5 U.S.C. 5514(a)(1). Federal employee records consist of records of Federal salary payments disbursed by members of the consortium.

§ 105–56.025 Definitions.

The following definitions apply to this subpart:

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

(b) *Agency* means a department, agency or sub-agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including Government corporations.

(c) *Centralized salary offset computer matching* means the computerized comparison of Federal employee records with delinquent debt records to identify Federal employees who owe such debts.

(d) *Consortium* means an interagency group established by the Secretary of the Treasury to implement centralized salary offset computer matching. The group includes all agencies that disburse Federal salary payments.

(e) *Creditor agency* means any agency that is owed a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(f) *Cross-serviced agency* means an arrangement between GSA and another agency whereby GSA provides financial support services to the other agency on a reimbursable basis. Financial support services can range from simply providing computer and software timesharing services to full-service administrative processing.

(g) *Debt* means any amount of money, funds, or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, including debt administered by a third party acting as an agent for the Federal Government. For purposes of this subpart, the term ''debt'' does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

(h) *Delinquent debt record* means information about a past-due, legally enforceable debt, submitted to GSA by FMS for purposes of administrative offset (including salary offset) in accordance with the provisions of 31 U.S.C. 3716(c)(6) and applicable regulations. Debt information includes the amount and type of debt and the debtor's name, address, and taxpayer identifying number.

(i) *Disbursing official* means an officer or employee designated to disburse Federal salary payments. This includes all disbursing officials of Federal salary payments, including but not limited to, disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, any government corporation, and any disbursing official of the United States designated by the Secretary.

(j) *Disposable pay* means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs, including contributions to the Thrift Savings Plan (TSP); premiums for life (excluding amounts deducted for supplemental coverage) and health insurance benefits; Internal Revenue Service (IRS) tax levies; and such other deductions that are required by law to be withheld.

(k) *Employee* means any individual employed by GSA or a cross-serviced agency of the executive, legislative, or judicial branches of the Federal Government, including Government corporations.

(l) *Federal employee records* means records of Federal salary payments that a paying agency has certified to a disbursing official for disbursement.

(m) *FMS* means the Financial Management Service, a bureau of the Department of the Treasury.

(n) *Pay* means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

(o) *Paying agency* means the agency that employs the Federal employee who owes the debt and authorizes the payment of his or her current pay. A paying agency also includes an agency that performs payroll services on behalf of the employing agency.

(p) *Salary offset* means administrative offset to collect a debt owed by a

Federal employee from the current pay account of the employee.

(q) *Secretary* means the Secretary of the Treasury or his or her delegate.

(r) *Taxpayer identifying number* means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

§ 105–56.026 GSA participation.

(a) As required under 5 U.S.C. 5514(a)(1), creditor agencies must participate at least annually in centralized salary offset computer matching. To meet this requirement, creditor agencies will notify FMS of all past-due, legally enforceable debts delinquent for more than 180 days for purposes of administrative offset, as required under 31 U.S.C. 3716(c)(6). Additionally, creditor agencies may notify FMS of past-due, legally enforceable debts delinquent for less than 180 days for purposes of administrative offset.

(b) Prior to submitting a debt to FMS for purposes of collection by administrative offset, including salary offset, creditor agencies will provide written certification to FMS that—

(1) The debt is past-due and legally enforceable in the amount submitted to FMS and that the creditor agency will ensure that collections (other than collections through offset) are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the creditor agency's right of action accrues;

(3) The creditor agency has complied with the provisions of 31 U.S.C. 3716 (administrative offset) and related regulations including, but not limited to, the provisions requiring the creditor agency to provide the debtor with applicable notices and opportunities for a review of the debt; and

(4) The creditor agency has complied with the provisions of 5 U.S.C. 5514 (salary offset) and related regulations including, but not limited to, the provisions requiring the creditor agency to provide the debtor with applicable notices and opportunities for a hearing.

(c) FMS may waive the certification requirement set forth in paragraph (b)(4) of this section as a prerequisite to submitting the debt to FMS. If FMS waives the certification requirement, before an offset occurs, the creditor agency will provide the Federal employee with the notices and opportunities for a hearing as required by 5 U.S.C. 5514 and applicable regulations, and will certify to FMS that the requirements of 5 U.S.C. 5514 and applicable regulations have been met.

(d) The creditor agency will notify FMS immediately of any payments credited by the agency to the debtor's account, other than credits for amounts collected by offset, after submission of the debt to FMS. The creditor agency will notify FMS once the debt is paid in its entirety. The creditor agency will also notify FMS immediately of any change in the status of the legal enforceability of the debt, for example, if the agency receives notice that the debtor has filed for bankruptcy protection.

§ 105–56.027 Centralized salary offset computer match.

(a) Delinquent debt records will be compared with Federal employee records maintained by members of the consortium or paying agencies. The records will be compared to identify Federal employees who owe delinquent debts for purposes of collecting the debt by administrative offset. A match will occur when the taxpayer identifying number and name of a Federal employee are the same as the taxpayer identifying number and name of a debtor.

(b) As authorized by the provisions of 31 U.S.C. 3716(f), FMS, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, as amended, for administrative offset, including salary offset, upon written certification by the creditor agency, that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p).

§ 105–56.028 Salary offset.

When a match occurs and all other requirements for offset have been met, as required by the provisions of 31 U.S.C. 3716(c), the disbursing official will offset the GSA employee's or cross-serviced agency employee's salary payment to satisfy, in whole or part, the debt owed by the employee. Alternatively, the GSA National Payroll Center, serving as the paying agency, on behalf of the disbursing official, may deduct the amount of the offset from an employee's disposable pay before the employee's salary payment is certified to a disbursing official for disbursement.

§ 105–56.029 Offset amount.

(a) The minimum dollar amount of salary offset under this subpart is $100.

(b) The amount offset from a salary payment under this subpart will be the lesser of—

(1) The amount of the debt, including any interest, penalties and administrative costs; or

(2) Up to 15 percent of the debtor's disposable pay.

(c) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency.

(d) Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of the creditor agency.

§ 105–56.030 Priorities.

GSA, acting as the paying agency, on behalf of the disbursing official, will apply the order of precedence when processing debts identified by the centralized salary offset computer match program as follows:

(a) A levy pursuant to the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) takes precedence over other deductions under this subpart.

(b) When a salary payment may be reduced to collect more than one debt, amounts offset under this subpart will be applied to a debt only after amounts offset have been applied to satisfy past due child support debts assigned to a State pursuant to the Social Security Act under 42 U.S.C. 602(a)(26) or 671(a)(17).

§ 105–56.031 Notice.

(a) The disbursing official will provide GSA an electronic list of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt are due other Federal agencies. The disbursing official will identify the creditor agency name and a point of contact that will handle concerns regarding the debt.

(b) Before offsetting a salary payment, the GSA National Payroll Center, acting as the paying agency on behalf of the disbursing official, will notify the debtor in writing of the date deductions from salary will commence and of the amount of such deductions.

(c)(1) When an offset occurs under this subpart, the disbursing official, or the GSA National Payroll Center on behalf of the disbursing official, will notify the debtor in writing that an offset has occurred including—

(i) A description of the payment and the amount of offset taken;

(ii) The identity of the creditor agency identified by the disbursing official requesting the offset; and

(iii) A contact point at the creditor agency identified by the disbursing official that will handle concerns regarding the offset.

(2) The information described in paragraphs (c)(1)(ii) and (c)(1)(iii) of this section does not need to be provided to the debtor when the offset occurs if such information was included in a prior notice from the disbursing official or the creditor agency.

§ 105–56.032 Fees.

GSA, while performing centralized salary offset computer matching services, may charge a fee sufficient to cover the full cost for such services. In addition, FMS, or GSA acting as the paying agency on behalf of FMS, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. FMS may deduct the fees from amounts collected by offset or may bill the creditor agency. Fees charged for offset will be based on actual administrative offsets completed.

§ 105–56.033 Disposition of amounts collected.

(a) The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under § 105–56.032 of this subpart, to the creditor agency.

(b) If an erroneous offset payment is made to the creditor agency, the disbursing official will notify the creditor agency that an erroneous offset payment has been made.

(1) The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the creditor agency; or

(2) Alternatively, upon the disbursing official's request, the creditor agency will promptly return to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to the creditor agency have been paid). The disbursing official and the creditor agency will adjust the debtor records appropriately.

[FR Doc. 03–30408 Filed 12–9–03; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–57

[GSPMR Amendment 2003–03; GSPMR Case 2003–105–2]

RIN 3090–AH85

Administrative Wage Garnishment

AGENCY: Office of Finance, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending its regulations to implement the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to administratively garnish the disposable pay of an individual to collect delinquent non-tax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury.

This part was previously titled Collection of Debts by Tax Refund Offset. Effective January 1, 1999, the Department of the Treasury started to conduct the tax refund offset program as part of the centralized offset program, known as the Treasury Offset Program (TOP), operated by the Financial Management Service (FMS), a bureau of the Department of the Treasury. Since GSA has a cross-servicing agreement with FMS, which includes the TOP, the Collection of Debts by Tax Refund Offset is no longer valid and is rescinded and replaced with the new part, Administrative Wage Garnishment.

DATES: *Effective date:* December 10, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 208–7312 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Michael J. Kosar, General Services Administration, Office of Finance (BCD), Office of the Chief Financial Officer, Room 3121, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–2029; electronic mail at *mike.kosar@gsa.gov.* Please cite GSPMR Amendment 2003–03, GSPMR case 2003–105–2.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements the wage garnishment provision in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321–358 (Apr. 26, 1996), codified at 31 U.S.C. 3720D. Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to administratively garnish up to 15 percent of the disposable pay of a debtor to satisfy delinquent non-tax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCIA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency collecting delinquent non-tax debt may administratively garnish a delinquent debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA.

In accordance with the requirements of the DCIA, this rule establishes the following rules and procedures:

1. *Notice.* At least 30 days before GSA initiates garnishment proceedings, the Agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of GSA to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. *Rights of the Debtor.* GSA will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence and/or amount of the debt and/or the terms of a repayment schedule. A hearing will be held prior to the issuance of a withholding order if the debtor's request is received timely. For hearing requests that are not received in the specified time frame, GSA will not delay issuance of the withholding order prior to conducting a hearing. GSA will not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the burden of informing GSA of the circumstances surrounding an involuntary separation from employment.

3. *Employer's Responsibilities.* GSA will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to GSA. This rule requires the debtor's employer to certify certain payment information about the debtor. Employers will not be required to vary their normal pay cycles

in order to comply with the garnishment order.

The DCIA prohibits employers from taking disciplinary actions against the debtor based on the fact that the debtor's wages are subject to administrative garnishment. In addition, the DCIA authorizes GSA to sue an employer for amounts not properly withheld from the wages payable to the debtor.

Discussion of Comments. In response to its Notice of Proposed Rule (NPR) concerning Administrative Wage Garnishment (68 FR 41290, July 11, 2003), GSA received one internal comment and one from another agency. A review of the comments is provided in the following comment analysis, including a discussion of GSA's determination whether to incorporate specific suggestions in the final rule. The comment analysis is organized by reference to the paragraph in the NPR.

NPR Sec. 105–57.005, Hearing. One commenter suggested that transcripts taken during the course of oral hearing proceedings be arranged by the hearing official and all charges associated with the taking of the transcript be the responsibility of GSA. The final rule incorporates this suggestion.

NPR Sec. 105–57.008, Amounts withheld. One commenter questioned if the NPR has the same net base rule as the current Consumer Credit Protection Act (CCPA) limitation of 15 percent of an eligible employee's disposable earnings, but not below $154.50 net per week. Under the NPR and the final rule, the amount of garnishment is the lesser of the amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay or the amount set forth in 15 U.S.C. 1673(a)(2), which is the amount by which a debtor's disposable pay exceeds an amount equal to thirty times the minimum wage. The current minimum wage is $5.15 per hour, times thirty equals $154.50.

B. Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified this regulation, including the certification referenced in this final rule (see § 105–57.007 of this part), will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to this regulation and to the certification requirement in this rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this rule.

C. Regulatory Flexibility Act

It is hereby certified this regulation will not have a significant economic impact on a substantial number of small entities because the regulation either (1) results in greater flexibility for GSA to streamline debt collection regulations, or (2) reflects the statutory language contained in the DCIA. Accordingly, a Regulatory Flexibility Analysis is not required.

D. Executive Order 13132

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. § 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

G. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 41 CFR Part 105–57

Claims, Government public contracts and property management, Income taxes.

Dated: December 2, 2003.

Stephen A. Perry,

Administrator of General Services.

For the reasons set out in the preamble, GSA amends 41 CFR chapter 105 as follows:

CHAPTER 105 [Amended]

1. Revise Part 105–57 to read as follows:

PART 105–57—ADMINISTRATION WAGE GARNISHMENT

Sec.

Authority: 5 U.S.C. §§ 552–553, 31 U.S.C. § 3720D, 31 CFR part 285.11.

§ 105–57.001 Purpose, authority and scope.

(a) This part provides standards and procedures for GSA to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debt owed to the United States.

(b) These standards and procedures are authorized under the wage garnishment provisions of the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720D, and Department of the Treasury Wage Garnishment Regulations at 31 CFR 285.11.

(c) *Scope.* (1) This part applies to any GSA program that gives rise to a delinquent non-tax debt owed to the United States and that pursues recovery of such debt.

(2) This part will apply notwithstanding any provision of State law.

(3) Nothing in this part precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 31 CFR parts 900 through 904.

(4) The receipt of payments pursuant to this part does not preclude GSA from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent non-tax debt owed to the United States.

GSA may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This part does not apply to the collection of delinquent non-tax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws. GSA standards and procedures for offsetting Federal wage payments are stated in 41 CFR part 105–56.

(6) Nothing in this part requires GSA to duplicate notices or administrative proceedings required by contract or other laws or regulations.

§ 105–57.002 Definitions.

(a) *Administrative offset,* as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

(b) *Business day* means Monday through Friday, excluding Federal legal holidays. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

(c) *Day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

(d) *Debtor* means an individual who owes a delinquent non-tax debt to the United States.

(e) *''Delinquent'' or ''past-due'' non-tax debt* means any non-tax debt that has not been paid by the date specified in GSA's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(f) *Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this part, ''amounts required by law to be withheld'' include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

(g) *Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government as defined by 31 CFR 285.11(c).

(h) *Evidence of service* means information retained by GSA indicating the nature of the document to which it pertains, the date of submission of the document, and to whom the document is being submitted. Evidence of service may be retained electronically or otherwise, so long as the manner of retention is sufficient for evidentiary purposes.

(i) *Financial hardship* means an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents. *See* § 105–57.010 of this part.

(j) For the purposes of the standards in this part, unless otherwise stated, the term ''Administrator'' refers to the Administrator of General Services or the Administrator's delegate.

(k) For the purposes of the standards in this part, the terms ''claim'' and ''debt'' are synonymous and interchangeable.

They refer to an amount of money, funds, or property that has been determined by GSA to be due the United States from any person, organization, or entity, except another Federal agency, from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources, including debt administered by a third party as an agent for the Federal Government. For the purposes of administrative offset under 31 U.S.C. 3716, the terms ''claim'' and ''debt'' include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(l) For the purposes of the standards in this part, unless otherwise stated, the terms ''GSA'' and ''Agency'' are synonymous and interchangeable.

(m) For the purposes of the standards in this part, unless otherwise stated, ''Secretary'' means the Secretary of the Treasury or the Secretary's delegate.

(n) *Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to GSA in satisfaction of a withholding order.

(o) *Hearing* means a review of the documentary evidence concerning the existence and/or amount of a debt, and/or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

(p) *Hearing official* means a Board Judge of the GSA Board of Contract Appeals (GSBCA).

(q) *Withholding order* means ''Wage Garnishment Order (SF 329B)'', issued by GSA. For purposes of this part, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

(r) In this part, words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms ''includes'' and ''including'' do not exclude matters not listed but do include matters that are in the same general class.

§ 105–57.003 General rule.

Whenever GSA determines a delinquent debt is owed by an individual, the Agency may initiate administrative proceedings to garnish the wages of the delinquent debtor.

§ 105–57.004 Notice requirements.

(a) At least 30 days before the initiation of garnishment proceedings, GSA will send, by first class mail, overnight delivery service, or hand delivery to the debtor's last known address a written notice informing the debtor of—

(1) The nature and amount of the debt;

(2) The intention of GSA to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(3) The debtor's rights, including those set forth in paragraph (b) of this section, and the time frame within which the debtor may exercise his or her rights.

(b) The debtor will be afforded the opportunity—

(1) To inspect and copy Agency records related to the debt;

(2) To enter into a written repayment agreement with GSA under terms agreeable to the Agency; and

(3) To request a hearing in accordance with § 105-57.005 of this part concerning the existence and/or amount of the debt, and/or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(2) of this section.

(c) The notice required by this section may be included with GSA's demand letter required by 41 CFR 105–55.010.

(d) GSA will keep a copy of the evidence of service indicating the date of submission of the notice. The evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 105–57.005 Hearing.

(a) GSA will provide a hearing, which at the hearing official's option may be oral or written, if within fifteen (15) business days of submission of the notice by GSA, the debtor submits a signed and dated written request for a hearing, to the official named in the notice, concerning the existence and/or amount of the debt, and/or the terms of the repayment schedule (for repayment schedules established other than by written agreement under § 105–57.004(b)(2) of this part). A copy of the request for a hearing must also be sent to the GSA Board of Contract Appeals (GSBCA) at the address indicated in paragraph (b)(2) of this section.

(b) *Types of hearing or review.* (1) For purposes of this section, whenever GSA is required to afford a debtor a hearing, the hearing official will provide the debtor with a reasonable opportunity for an oral hearing when he/she determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(2) If the hearing official determines that an oral hearing is appropriate, he/she will establish the time and location of the hearing. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. In-person hearings will be conducted in the hearing official's office located at GSA Central Office, 1800 F St., NW., Washington, DC 20405, or at another location designated by the hearing official. All personal and travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(3) The debtor may represent himself or herself or may be represented by another person of his or her choice at the hearing. GSA will not compensate the debtor for representation expenses, including hourly fees for attorneys, travel expenses, or costs for reproducing documents.

(4) In those cases when an oral hearing is not required by this section, the hearing official will nevertheless conduct a ''paper hearing'', that is, the hearing official will decide the issues in dispute based upon a review of the written record. The hearing official will establish a reasonable deadline for the submission of evidence.

(c) Subject to paragraph (k) of this section, if the debtor's written request is received by GSA on or before the 15th business day after the submission of the notice described in § 105–57.004(a) of this part, the Agency will not issue a withholding order under § 105–57.006 of this part until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (h) and (i) of this section has been rendered.

(d) If the debtor's written request for a hearing is received by GSA after the 15th business day following the mailing of the notice described in § 105–57.004(a) of this part, GSA may consider the request timely filed and provide a hearing if the debtor can show that the delay was because of circumstances beyond his or her control. However, GSA will not delay issuance of a withholding order unless the Agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or GSA receives information that the Agency believes justifies a delay or cancellation of the withholding order.

(e) After the debtor requests a hearing, the hearing official will notify the debtor of—

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a written hearing.

(f) *Burden of proof.* (1) GSA will have the burden of establishing the existence and/or amount of the debt.

(2) Thereafter, if the debtor disputes the existence and/or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(g) The hearing official will arrange and maintain a written transcript of any hearing provided under this section. The transcript will be made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701 through 706. All charges associated with the taking of the transcript will be the responsibility of GSA. A hearing is not required to be a formal evidentiary-type hearing; however, witnesses who testify in oral hearings will do so under oath or affirmation.

(h) The hearing official will issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by GSA. If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing—

(1) GSA will not issue a withholding order until the hearing is held and a decision rendered; or

(2) If GSA had previously issued a withholding order to the debtor's employer, the Agency will suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(i) The written decision will include—

(1) A summary of the facts presented;

(2) The hearing official's findings, analysis and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(j) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(k) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (e) of this section, or to provide written submissions within the time set by the hearing official, will be deemed to have waived his or her right to appear and present evidence.

§ 105–57.006 Wage garnishment order.

(a) Unless GSA receives information it believes justifies a delay or cancellation of the withholding order, the Agency will send, by first class mail, overnight delivery service or hand delivery, a SF 329A (Letter to Employer & Important Notice to Employer), a SF 329B (Wage Garnishment Order), a SF 329C (Wage Garnishment Worksheet), and a SF 329D (Employer Certification), to the debtor's employer—

(1) Within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice described in § 105–57.004(a) of this part); or

(2) If a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the hearing official to proceed with garnishment.

(b) The withholding order sent to the employer under paragraph (a) of this section will contain the signature of, or the image of the signature of, the Administrator or his or her delegate. The order will contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments are to be sent.

(c) GSA will retain a copy of the evidence of service indicating the date of submission of the order. The evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 105–57.007 Certification by employer.

The employer must complete and return the SF 329D (Employer Certification) to GSA within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

§ 105–57.008 Amounts withheld.

(a) After receipt of the garnishment order issued under this part, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (b) of this section. The employer may use the SF 329C (Wage Garnishment Worksheet) to calculate the amount to be deducted from the debtor's disposable pay.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, the amount of garnishment will be the lesser of—

(1) The amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment), which is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. *See* 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority, the following will apply:

(1) Unless otherwise provided by Federal law, withholding orders issued under this part will be paid in the amounts set forth under paragraph (b) of this section and will have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support will have priority over withholding orders issued under this part.

(2) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this part, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this part will be the lesser of—

(i) The amount calculated under paragraph (b) of this section; or

(ii) An amount equal to 25 percent of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to GSA, the Agency may issue multiple withholding orders provided the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to GSA all amounts withheld in accordance with the withholding order issued pursuant to this part.

(f) An employer will not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(g) Any assignment or allotment by an employee of his or her earnings will be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment made pursuant to a family support judgment or order.

(h) The employer will withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from GSA to discontinue wage withholding. The garnishment order will indicate a reasonable period of time within which the employer is required to commence wage withholding, usually the first payday after the employer receives the order. However, if the first payday is within ten (10) days after the receipt of the garnishment order, the employer may begin deductions on the second payday.

(i) Payments received through a wage garnishment order will be applied in the following order:

(1) To outstanding penalties.

(2) To administrative costs incurred by GSA to collect the debt.

(3) To interest accrued on the debt at the rate established by the terms of the obligation under which it arose or by applicable law.

(4) To outstanding principal.

§ 105–57.009 Exclusions from garnishment.

GSA will not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing GSA of the circumstances surrounding an involuntary separation from employment.

§ 105–57.010 Financial hardship.

(a) A debtor whose wages are subject to a wage withholding order under this part, may, at any time, request a review by GSA of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting a review under paragraph (a) of this section shall submit the basis for claiming the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation.

(c) If a financial hardship is found, GSA will downwardly adjust, by an amount and for a period of time agreeable to the Agency, the amount garnished to reflect the debtor's financial condition. GSA will notify the employer of any adjustments to the amounts to be withheld.

§ 105–57.011 Ending garnishment.

(a) Once GSA has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the Agency will send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, GSA will review its debtors' accounts to ensure that

garnishment has been terminated for accounts that have been paid in full.

§ 105–57.012 Actions prohibited by the employer.

An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this part. *See* 31 U.S.C. 3720D(e).

§ 105–57.013 Refunds.

(a) If a hearing official, at a hearing held pursuant to § 105–57.005 of this part, determines that a debt is not legally due and owing to the United States, GSA will promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this part will not bear interest.

§ 105–57.014 Right of action.

GSA may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with §§ 105–057.006 and 105–57.008 of this part, plus attorney's fees, costs, and if applicable, punitive damages. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this part, ''termination of the collection action'' occurs when GSA has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if GSA has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1090–AA84

Special Rules Applicable to Public Land Hearings and Appeals

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending its existing regulations governing petitions for stays of grazing decisions issued by the Bureau of Land Management. The changes would specifically authorize OHA administrative law judges to decide such petitions, which would expedite the administrative review process by eliminating an inefficient division of authority.

EFFECTIVE DATE: January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U. S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Phone: 703–235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Proposed Rule

On May 22, 2003, the Office of Hearings and Appeals (OHA) proposed to amend its existing regulations governing petitions to stay bureau decisions. 68 FR 27955–27960 (May 22, 2003). As explained in that proposal, the existing regulations governing hearings and appeals of grazing decisions issued by the Bureau of Land Management (BLM) assign responsibility for deciding petitions for a stay of such decisions to the Interior Board of Land Appeals (IBLA) or the Director, OHA. Responsibility for conducting the hearing, ruling on other motions, and making the initial decision on the appeal, however, rests with administrative law judges (ALJs) in the Hearings Division, OHA.

When an appeal of a grazing decision is filed with a BLM field office, the current OHA regulations require that office to forward the appeal to the BLM State Director, and the State Director to transmit it to the OHA Hearings Division office in Salt Lake City, Utah. 43 CFR 4.470(d). If a petition for a stay of the decision accompanies the appeal, the Hearings Division must forward the petition to IBLA in Arlington, Virginia. Under 43 CFR 4.21(b)(4), IBLA (or the OHA Director) has 45 days to decide whether or not to grant the petition; after IBLA decides, it returns the record to the Hearings Division in Salt Lake City. In the meantime, the ALJ to whom the case is assigned normally waits to schedule the hearing and to rule on any motions concerning the appeal, such as a motion to intervene in the appeal or a motion by BLM to dismiss the appeal. IBLA does not have authority to rule on such motions.

This division of responsibility results in delays and inefficiencies that would be alleviated if the ALJs also had authority to rule on petitions for a stay. For example, IBLA sometimes finds during its consideration of a stay petition that a motion to dismiss should be granted. However, under the existing regulations, IBLA cannot grant the motion but must proceed to decide the stay petition and then refer the case, including the motion to dismiss, back to the Hearings Division. If the ALJ had authority to rule on a petition for a stay, he or she could consider any other pending motions at the same time and, where appropriate, grant a motion to dismiss without having to rule on the petition. Moreover, under the existing regulations, IBLA must thoroughly review the record in deciding whether to grant a stay petition, and the ALJ must then do the same in deciding the merits of the case. This is an unnecessary duplication of effort and takes time away from IBLA's consideration of other appeals.

Therefore, OHA proposed amendments to the existing regulations in 43 CFR 4.21 and 4.470 *et seq.* to provide the authority to ALJs to rule on petitions for a stay of BLM grazing decisions. OHA also proposed that any party may appeal to the IBLA an order of an ALJ granting or denying a petition for a stay. Any party (other than BLM) wishing to appeal an order of an ALJ denying a petition for a stay would be able to seek judicial review instead of appealing to IBLA.

OHA also proposed to revise the existing regulatory language to make it clearer and to conform to Departmental requirements for writing rules in plain language. *See* 318 DM 4.2.

B. Responses to Comments

We received comments on the proposed rules from Nordhaus Haltom Taylor Taradash & Bladh, LLP, on behalf of the Jicarilla Apache Nation, the Pueblo of Laguna, and the Pueblo of Santa Ana; the National Wildlife Federation; Budd-Falen Law Offices, P.C.; the National Mining Association; Holme Roberts & Owen LLP, on behalf of Placer Dome America; Jason R. Warran, Esq.; and the American Farm Bureau Federation.

Most commenters expressed agreement with the basic intent of the proposed rule, *i.e.*, to authorize ALJs to decide petitions for stay of BLM grazing decisions. But they raised numerous questions about the proposed amendments to the general regulation in 43 CFR 4.21 and the need for such amendments, and they urged that we limit the final rule to the grazing-related provisions of §§ 4.470–.478.

For example, some commenters were concerned that the proposed amendments to § 4.21 could be misinterpreted to change the current effective date provisions for BLM decisions involving mining operations under 43 CFR subpart 3809, BIA decisions appealable under 25 CFR part 2, or other bureau decisions in unanticipated contexts. In addition, some commenters were concerned that proposed § 4.22 did not make as clear as the existing § 4.21(a) that some bureau decisions may be effective immediately, *i.e.*, during the period when an appeal of the decision may be filed, pursuant to another regulation, *e.g.*, 43 CFR 4160.3(f) or 3809.803. Another commenter questioned whether proposed § 4.22 was as clear as existing § 4.21 that, absent another regulation or petition for a stay, a bureau decision would become effective on the day after the expiration of the time an appeal could be filed. Further, some commenters were concerned about the effect of the proposed rule on the many existing regulations that cross reference § 4.21, prior to the Department's updating those regulations with references to the new sections in the proposed rule.

In light of these questions and concerns, we have decided to defer action on the proposed amendments to 43 CFR 4.21 and consider further the questions raised about those proposed amendments. For this reason, we will limit our responses to comments that related to the proposed amendments (1) extending authority to ALJs to decide petitions for a stay of BLM grazing decisions and (2) providing for appeals of ALJ decisions on such petitions.

One comment suggested that proposed § 4.471(a) be amended to allow the filing of a petition for a stay any time one can satisfy the requirements of proposed § 4.471(d), rather than limiting the time to the 30 days allowed for filing an appeal. The commenter observed that the harm from a BLM decision may not become apparent for some time and that, if an appeal was still pending before an ALJ, there would be no reason the ALJ could not consider the appropriateness of a stay if that time came later. If the decision had already been substantially implemented, that could be taken into consideration in determining the relative harm to the parties. The number of stay petitions might be reduced if the regulations did not force an appellant to decide within 30 days whether a decision was going to cause immediate and irreparable harm, the commenter suggested.

We agree that in some cases the effect of a BLM decision might not become apparent until after 30 days, and we do not wish to encourage the filing of petitions for a stay that may not be necessary. However, under existing IBLA decisions, petitions for a stay may be filed after the 30-day period for filing an appeal has expired. In *Robert E. Oriskovich,* 128 IBLA 69, 70 (1993), IBLA noted that, while the failure to timely file a petition for stay results in the decision being appealed becoming effective on the day following the expiration of the appeal period, nothing in the regulations precludes the filing of a subsequent petition for stay that the Board may, in its discretion, entertain. *See also Western Shoshone National Council,* 130 IBLA 69, 72 (1994) (''Nothing in the regulations at 43 CFR part 4 precludes appellant from filing a petition or request for a stay at any time during a proceeding before the Board. * * * '') Because an administrative law judge would have general jurisdiction over an appeal from a BLM grazing decision, he or she could entertain a petition for a stay that was filed with the Hearings Division at any time the appeal was still pending. Therefore, it is not necessary to amend the regulation in order to allow the filing of a petition for a stay after the appeal period has expired, as the commenter suggested.

Another comment suggested that proposed § 4.478(a) be amended to allow a person adversely affected by the decision of an ALJ on a petition for a stay to appeal to IBLA even if the person was not a ''party to the case'' as defined in § 4.410(b). For example, if a person had not objected to a proposed BLM decision that became final because he or she agreed with it, the person would not have a right to appeal the BLM decision under § 4.410 since he or she was not adversely affected by the decision and had not previously participated in the decision-making process. See 68 FR 33794, 33803 (June 5, 2003). However, if another party appealed the BLM decision and the ALJ granted a stay, the person could be adversely affected by the stay. In that situation, the commenter argued, the person should be allowed to appeal the stay to IBLA.

The commenter is correct that, if the person was not a ''party to the case'' as defined in § 4.410(b), he or she would not have a right to appeal the ALJ's stay decision to IBLA. Under that regulation, a ''party to the case'' is

> One who has taken the action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim or an application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.

Other ways a person in the situation described in the comment could have previously participated in the decision-making process might include commenting on the proposed BLM decision or intervening in the case before the ALJ to oppose the stay petition.

We are not persuaded that a requirement of previous participation in the case is unduly burdensome or should be waived in the situation posited by the commenter. As explained in the preamble to the June 5, 2003, final rule amending § 4.410, this is a codification of longstanding IBLA precedent on who has standing to appeal a decision. 68 FR 33794. We have therefore retained the reference to § 4.410 in final § 4.478(a).

A commenter suggested that, if an appellant sought IBLA review of an ALJ decision on a petition for a stay under proposed § 4.478(a) but the Board did not ''expeditiously issue a decision on the appeal'' as provided in proposed § 4.478(c), then the appellant should be allowed to abandon that appeal and instead go to federal court under proposed § 4.478(b). The commenter expressed concern that the Board might not quickly decide such appeals, despite the statement in proposed § 4.478(c).

The commenter's concern for timely decisions must be balanced against the significant benefits that inure to both the Department and the courts from the requirement that appellants exhaust their administrative remedies before seeking judicial review. Given the commitment that OHA is making in adopting § 4.478(c), we disagree with the commenter that there is a risk of substantial delay in IBLA's review process sufficient to warrant forgoing those benefits. Of course, if the BLM decision is in effect, one may seek judicial review at any time. *See Darby* v. *Cisneros,* 509 U.S. 137, 153–54, 113 S. Ct. 2539, 2547–48 (1993).

Other commenters thought the proposed rule was arbitrary in providing that a party could seek immediate judicial review of an ALJ order denying a stay but not of an ALJ order granting a stay; the latter would first have to be appealed to IBLA.

We disagree with the commenters that this result is arbitrary. Under both the proposed and final rule, an appeal to IBLA is available in either situation. However, if a stay is denied, the BLM decision is operative, and judicial review is available under the APA as an alternative to an IBLA appeal. *See* 5 U.S.C. 704; *Darby, supra.* The rule

simply reflects this statutory and decisional authority. If the stay is granted and the BLM decision is inoperative, resort to the courts is not available until the parties have exhausted their administrative remedies.

One comment stated that § 4.479 needs to be amended so as not to require exhaustion of administrative remedies when 43 CFR 4160.3(d) or (e) allows grazing to take place even if a stay has been granted, citing *Idaho Watersheds Project* v. *Hahn*, 307 F.3d 815, 824–28 (9th Cir. 2002). Section 4160.3(d)–(e) specifies what grazing use is authorized when OHA stays a BLM decision pending appeal. In general,

> An applicant who was granted grazing use in the preceding year may continue at that level of authorized use during the time the decision is stayed. * * * Where an applicant had no authorized grazing use during the previous year * * *, the authorized grazing use shall be consistent with the final decision pending the [OHA] final determination on the appeal.

In *Hahn*, environmental plaintiffs challenged BLM grazing decisions on the grounds that they perpetuated a long-term problem of livestock overgrazing in the Owyhee Resource Area, allegedly in violation of federal statutes and regulations and BLM's own guidelines for rangeland management. BLM and the ranchers argued that the lawsuit should be dismissed because the plaintiffs had not filed an administrative appeal and sought a stay of the grazing decisions and had therefore failed to exhaust their administrative remedies. The court disagreed, holding that, because of § 4160.3(d)–(e), BLM's grazing decisions would not be rendered inoperative even if a stay were granted.

While finding that the plaintiffs were not required to exhaust their administrative remedies under the facts of that case, the court in *Hahn* left open the prospect that, under a different set of facts, a stay would render the final BLM decision inoperative for purposes of 5 U.S.C. 704, even if it resulted in authorized use at the previous year's level. In that situation, exhaustion of administrative remedies would still be required. For example, if a BLM grazing decision increased a rancher's authorized use from the previous year's level and an environmental group challenged that increase, a stay that resulted in authorized use at the previous year's level under § 4160.3(d)–(e) would render the BLM decision inoperative, and exhaustion of administrative remedies would be required. Similarly, if a BLM grazing decision reduced a rancher's authorized use from the previous year's level and the rancher challenged that decrease, a stay that resulted in authorized use at the previous year's level would render the BLM decision inoperative, and exhaustion of administrative remedies would be required. We have revised § 4.479(d) to reflect the court's decision in *Hahn*.

One commenter opposed the proposed regulations on the grounds that, under the Taylor Grazing Act (TGA) and the APA, a BLM decision

> affecting a grazing permit is a sanction and an order within the meaning of the APA [and] cannot become effective until the permittee is afforded a hearing and allowed to present testimony and other evidence. 5 U.S.C. 556(d) & (e). * * * The proposed rule change would be facially invalid. * * * [T]he proposed changes force the holder of a TGA grazing permit to seek a stay when the TGA and the APA mandate that such a stay be automatic.

We disagree that the typical BLM grazing decision is either a ''sanction'' or an ''order'' within the meaning of the APA. In fact, in a number of cases, the grazing permittee has sought the BLM decision and wants it to take effect immediately, but another interested party files an appeal and a petition for a stay. In any event, this argument is currently under review in *Wallace* v. *Bureau of Land Management*, No. 02–1119 (CBS) (D. Colo.). If necessary based on the outcome of that litigation, we will consider further amendments to our regulations at a future time.

C. Section-by-Section Analysis

Section 4.421

We have added a definition for the term ''person named in the decision,'' and that term is then used in §§ 4.470–.472 to identify everyone who must be served with an appeal, petition for a stay, and a response. The term is defined as ''an affected applicant, permittee, lessee, or agent or lienholder of record, or an interested public as defined in § 4100.0–5 of this title.'' BLM is required to serve its proposed decision on these persons under § 4160.1, and will list their names and addresses at the conclusion of its final grazing decision. This will help to ensure that anyone whose interest may be adversely affected by the final BLM decision, or by an appeal of that decision, has an opportunity to participate in the appeal process and will be bound by the outcome.

Section 4.470

This section is based on the existing § 4.470(a)–(b). We have added the phrase, ''or within 30 days after a proposed decision becomes final as provided in § 4160.3(a),'' to be consistent with § 4160.4. We have also added the phrase, ''and serve a copy of the appeal on any other person named in the decision,'' at the end of § 4.470(a). This language is based on the service requirements in 43 CFR 4.22(b), 4.413(a).

Throughout this preamble and rule, references to a ''final BLM grazing decision'' or ''the decision'' should be construed to include any relevant portion of such a decision. Thus an adversely affected party may appeal only a portion of a BLM decision, may petition for or be granted a stay of only a portion of a BLM decision, and so on. Adding a phrase like ''or relevant portion thereof'' wherever the term ''final BLM grazing decision'' appears would make the rule cumbersome and would merely state what most readers would take for granted anyway.

Paragraphs (b), (c), and (d) are based on similar language in the existing § 4.470. Paragraphs (b) and (c) are adopted as proposed, and paragraph (d) is modified to refer to the appeal period provided in paragraph (a). We have moved proposed paragraph (e) to redesignated § 4.474 because that section deals with the authority of an ALJ; as a result, proposed paragraph (f) has become paragraph (e).

Section 4.471

Section 4.471 is new; existing § 4.471 has been redesignated as § 4.473. As proposed, new § 4.471 would have referred to the standards and procedures in existing § 4.21 (proposed §§ 4.22-.24) regarding petitions for a stay and requests to make a BLM decision immediately effective. Since we have decided not to amend § 4.21 in this final rule, we have revised § 4.471 so that it fully incorporates the relevant standards and procedures from § 4.21.

In new § 4.471, paragraph (a) specifies where a petition for a stay must be filed, and paragraph (b) specifies where copies must be served.

Proposed paragraph (b), dealing with requests to make a BLM decision effective immediately—and related provisions in proposed §§ 4.474(c)(2) and 4.478(a)(2)—have been deleted. These provisions were intended to extend to the ALJ the authority given to the OHA Director and the Board in § 4.21(a)(1) to make a decision effective immediately when the public interest so requires, notwithstanding the automatic stay provisions of § 4.21(a)(1)–(3). Instead of the several deleted provisions, we have added § 4.479(c) to state the same authority more simply.

Proposed paragraph (c), redesignated as paragraph (b), has been revised to require service of copies of the appeal

and of any petition for a stay on (1) any other person named in the decision from which the appeal is taken, and (2) the appropriate office of the Office of the Solicitor, as provided in § 4.413(a) and (c). We have deleted the requirement to send a copy to the Hearings Division, OHA, in Arlington.

Because we are not amending the general rules in subpart B as proposed, we have revised proposed paragraph (d), redesignated as paragraphs (c) and (d), to incorporate the standards for granting a stay and the burden of proof that are currently found in section 4.21(b)(1)–(2).

Section 4.472

This section is also new; existing § 4.472 has been redesignated as § 4.474. New § 4.472 sets forth procedures and time frames for the filing of various documents by BLM and other persons following receipt of the appeal and petition for a stay. It also sets forth a deadline for a decision by the ALJ on such a petition.

Paragraph (a) is based on existing § 4.470(d). As revised, BLM must transmit an appeal to the Hearings Division, Office of Hearings and Appeals, in Salt Lake City, Utah, within 10 days after receiving the appeal. If a petition for a stay has been received, BLM's transmittal must also include any response BLM wishes to file to the petition and the following documents from the case file: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; the final BLM grazing decision; and any other documents that BLM wishes the administrative law judge to consider in deciding the petition for a stay, such as BLM's environmental assessment. If necessary, an ALJ could grant an extension of the 10-day period under § 4.22(f). If BLM files a response, it must serve a copy on the appellant and any other person named in the decision from which the appeal is taken.

Under paragraph (b), any person named in the decision from which the appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file a motion to intervene in the appeal together with the response with the Hearings Division within 10 days after receiving the petition. The person must serve a copy of the motion to intervene and response on the appellant, the appropriate office of the Office of the Solicitor, and any other person named in the decision.

Under existing § 4.471, redesignated as § 4.473 by this final rule, BLM is to notify any person it believes may be directly affected by the decision on appeal. Such a person may appear at the hearing and, ''upon a proper showing of interest, may be recognized by the administrative law judge as an intervenor in the appeal.'' For guidance on what interest is sufficient for intervenor status, *see Bear River Land and Grazing* v. *BLM*, 132 IBLA 110, 113–14 (1995). As existing § 4.471 shows, a motion to intervene is not limited to the 10-day period for filing a response to a petition for a stay; but if a person who is not yet a party to the appeal wishes to respond to the petition for a stay, he or she must submit a motion to intervene along with his or her response, within the 10 days allowed for a response to a petition for a stay.

Under paragraph (c), if a petition for a stay has not been filed, BLM must promptly transmit the pertinent documents from the case file to the administrative law judge assigned to the appeal, once the appeal has been docketed by the Hearings Division.

Under paragraph (d), an ALJ must rule on a petition for a stay that is filed with an appeal, and any motion to intervene filed under paragraph (b), within 45 days after the expiration of the appeal period. This deadline is based on existing § 4.21(b)(4).

Paragraph (e), dealing with the effective date of a BLM decision for which a petition for a stay has been filed, is based on § 4.21(a)(3). It provides that any BLM grazing decision that is not already in effect and for which a stay is not granted will become effective immediately after the ALJ denies the petition or fails to act on the petition within the 45-day deadline set forth in paragraph (d).

Paragraph (f) authorizes any party to file a motion to dismiss the appeal or any other appropriate motion with the Hearings Division at any appropriate time and provides for a response to such a motion. This paragraph is also based on language in existing § 4.470(d). The existing regulation provides that the BLM State Director may file a motion to dismiss within 30 days of his or her receipt of the appeal, for any of six specified reasons. In fact, however, under existing Hearings Division and IBLA practice, BLM or any other party may file any appropriate motion at any appropriate time for any appropriate reason. Therefore, new § 4.472(f) is worded more broadly than existing § 4.470(d) to allow for other movants, motions, times for filing, and reasons.

Paragraph (g) requires service of a motion or response on the other parties to the appeal.

Section 4.474

Existing § 4.472 dealing with the authority of an ALJ has been redesignated as new § 4.474(a)–(b). Paragraph (c) has been added to authorize the ALJ to rule on any petition for a stay of a BLM decision or any motion. As noted above, the authority of an ALJ to consolidate appeals, found in existing § 4.470(c) and proposed as § 4.470(e), has been added to this section as paragraph (d).

Section 4.478

Existing § 4.476 dealing with appeals to IBLA has been redesignated as new § 4.478. Because we are not amending the general rules in subpart B as proposed, we have revised proposed paragraph (a) by removing the reference to proposed § 4.24(c) and have incorporated proposed § 4.24(d) through (f) as § 4.478(b) through (d). Proposed § 4.478(b), which was based on existing § 4.476, has become paragraph (e).

Section 4.479

Existing § 4.477 dealing with the effectiveness of a BLM decision pending appeal has been redesignated as § 4.479. Final § 4.479 has been expanded from its proposed version to explain more fully the effectiveness of a BLM grazing decision pending appeal. Paragraph (a) has been added to incorporate the limited automatic stay provisions of existing § 4.21(a) and proposed § 4.22. These automatic stay provisions do not apply if BLM has made its decision immediately effective under § 4160.3, as set forth in proposed § 4.479(a), which is final § 4.479(b), or under § 4190.1, which was added by the June 5, 2003, rulemaking 68 FR 33794, 33804.

As noted previously, final § 4.479(c) has been added to extend to the ALJ the authority given to the OHA Director and the Board in § 4.21(a)(1) to make a decision effective immediately when the public interest so requires, notwithstanding the automatic stay provisions of § 4.21(a)(1)–(3). Proposed § 4.479(b) has been retained as final § 4.479(d). Final § 4.479(e) and (f) modify proposed § 4.479(c) to clarify the requirement for exhaustion of administrative remedies and to reflect the decision in the Hahn case, discussed above.

II. Review Under Procedural Statutes and Executive Orders

A. Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, the Department finds that this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government. A cost-benefit and economic analysis is not required. These amended rules will have virtually no effect on the economy because they will only add authority for ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

2. This rule will not create inconsistencies with or interfere with other agencies' actions. The rules amend existing OHA regulations to add authority for ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

3. This rule will not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These regulations have to do only with the procedures for hearings and appeals of BLM grazing decisions, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule will only add authority for ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

4. This rule does not raise novel legal or policy issues. The rule simply extends ALJs' existing authority to include the authority to decide petitions for a stay of BLM grazing decisions, and provides for appeals of ALJ decisions on such petitions.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The extension of authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effect on small entities. A Small Entity Compliance Guide is not required.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

1. This rule will not have an annual effect on the economy of $100 million or more. Granting authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effect on the economy.

2. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Granting ALJs authority to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will not affect costs or prices for citizens, individual industries, or government agencies.

3. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Extending authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), the Department finds as follows:

1. This rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. Small governments do not often appeal BLM grazing decisions. Authorizing ALJs to decide petitions for a stay of such decisions, and providing for appeals of ALJ decisions on such petitions, will neither uniquely nor significantly affect these governments because such authority currently exists elsewhere. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

2. This rule will not produce an unfunded Federal mandate of $100 million or more on State, local, or tribal governments or the private sector in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

E. Takings (E.O. 12630)

In accordance with Executive Order 12630, the Department finds that the rule will not have significant takings implications. A takings implication assessment is not required. These amendments to existing rules authorizing ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effect on property rights.

F. Federalism (E.O. 13132)

In accordance with Executive Order 13132, the Department finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. There is no foreseeable effect on states from extending to ALJs the existing authority to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions. A federalism assessment is not required.

G. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. These regulations, because they simply extend to ALJs already existing authority to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions, will not burden either administrative or judicial tribunals.

H. Paperwork Reduction Act

This rule will not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. These regulations will only extend authority to ALJs to decide petitions for stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions; they will not require the public to provide information.

I. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a ''categorical exclusion'' as a category of actions that

the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that this rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes ''[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature.'' In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to this rule. This rule is an administrative and procedural rule, relating to the authority of ALJs to decide petitions for stays of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

J. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of this rule on federally recognized Indian tribes and has determined that there are no potential effects. These rules will not affect Indian trust resources; they will provide authority to ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

K. Effects on the Nation's Energy Supply

In accordance with Executive Order 13211, the Department finds that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. Extending authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will not affect energy supply or consumption.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Grazing lands, Public lands.

Dated: December 3, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

■ For the reasons set forth in the preamble, part 4, subpart E, of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 4—[AMENDED]

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

■ 1. The authority for 43 CFR part 4, subpart E, is revised to read as follows:

Authority: Sections 4.470 to 4.480 also issued under the authority of 43 U.S.C. 315a.

■ 2. The cross reference for 43 CFR part 4, subpart E, continues to read as follows:

Cross Reference: See subpart A for the authority, jurisdiction, and membership of the Board of Land Appeals within the Office of Hearings and Appeals. For general rules applicable to proceedings before the Board of Land Appeals as well as the other Appeals Boards of the Office of Hearings and Appeals, *see* subpart B.

■ 3. In § 4.421, revise paragraph (c) and add paragraph (h) to read as follows:

§ 4.421 Definitions

* * * * *

(c) *Bureau* or *BLM* means the Bureau of Land Management.

* * * * *

(h) *Person named in the decision* means any of the following persons identified in a final BLM grazing decision: an affected applicant, permittee, lessee, or agent or lienholder of record, or an interested public as defined in § 4100.0–5 of this title.

§§ 4.471–4.478 [Redesignated]

■ 4. Redesignate §§ 4.471 through 4.478 as §§ 4.473 through 4.480, respectively.

■ 5. Revise § 4.470 and add new §§ 4.471 and 4.472 to read as follows:

§ 4.470 How to appeal a final BLM grazing decision to an administrative law judge.

(a) Any applicant, permittee, lessee, or other person whose interest is adversely affected by a final BLM grazing decision may appeal the decision to an administrative law judge within 30 days after receiving it or within 30 days after a proposed decision becomes final as provided in § 4160.3(a) of this title. To do so, the person must file an appeal with the BLM field office that issued the decision and serve a copy of the appeal on any person named in the decision.

(b) The appeal must state clearly and concisely the reasons why the appellant thinks the BLM grazing decision is wrong.

(c) Any ground for appeal not included in the appeal is waived. The appellant may not present a waived ground for appeal at the hearing unless permitted or ordered to do so by the administrative law judge.

(d) Any person who, after proper notification, does not appeal a final BLM grazing decision within the period provided in paragraph (a) of this section may not later challenge the matters adjudicated in the final BLM decision.

(e) Filing an appeal does not by itself stay the effectiveness of the final BLM decision. To request a stay of the final BLM decision pending appeal, *see* § 4.471.

§ 4.471 How to petition for a stay of a final BLM grazing decision.

(a) An appellant under § 4.470 may petition for a stay of the final BLM grazing decision pending appeal by filing a petition for a stay together with the appeal under § 4.470 with the BLM field office that issued the decision.

(b) Within 15 days after filing the appeal and petition for a stay, the appellant must serve copies on—

(1) Any other person named in the decision from which the appeal is taken; and

(2) The appropriate office of the Office of the Solicitor, in accordance with § 4.413(a) and (c).

(c) A petition for a stay of a final BLM grazing decision pending appeal under paragraph (a) of this section must show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of immediate and irreparable harm if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

(d) The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

§ 4.472 Action on an appeal and petition for a stay.

(a) BLM must transmit any documents received under §§ 4.470 and 4.471, within 10 days after receipt, to the Hearings Division, Office of Hearings and Appeals, Salt Lake City, Utah. If a petition for a stay has been filed, the transmittal must also include any response BLM wishes to file to a petition for a stay and the following documents from the case file: the application, permit, lease, or notice of unauthorized use underlying the final

BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; the final BLM grazing decision; and any other documents that BLM wishes the administrative law judge to consider in deciding the petition for a stay. BLM must serve a copy of any such response on the appellant and any other person named in the decision from which the appeal is taken.

(b) Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the appropriate office of the Office of the Solicitor in accordance with § 4.413(a) and (c), and any other person named in the decision.

(c) If a petition for a stay has not been filed, BLM must promptly transmit the following documents from the case file to the administrative law judge assigned to the appeal, once the appeal has been docketed by the Hearings Division: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; and the final BLM grazing decision.

(d) Within 45 days after the expiration of the time for filing a notice of appeal, an administrative law judge must grant or deny—

(1) A petition for a stay filed under § 4.471(a), in whole or in part; and

(2) A motion to intervene filed with a response to the petition under paragraph (b) of this section.

(e) Any final BLM grazing decision that is not already in effect and for which a stay is not granted will become effective immediately after the administrative law judge denies a petition for a stay or fails to act on the petition within the time set forth in paragraph (d) of this section.

(f) At any appropriate time, any party may file with the Hearings Division a motion to dismiss the appeal or other appropriate motion. The appellant and any other party may file a response to the motion within 30 days after receiving a copy.

(g) Within 15 days after filing a motion or response under paragraph (f) of this section, any moving or responding party must serve a copy on every other party. Service on BLM must be made on the appropriate office of the Office of the Solicitor in accordance with § 4.413(a) and (c).

■ 6. In newly redesignated § 4.474, add paragraphs (c) and (d) to read as follows:

§ 4.474 Authority of administrative law judge.

* * * * *

(c) The administrative law judge may consider and rule on all motions and petitions, including a petition for a stay of a final BLM grazing decision.

(d) An administrative law judge may consolidate two or more appeals for purposes of hearing and decision when they involve a common issue or issues.

■ 7. Revise newly redesignated § 4.478 to read as follows:

§ 4.478 Appeals to the Board of Land Appeals; judicial review.

(a) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal to the Board from an order of an administrative law judge granting or denying a petition for a stay.

(b) As an alternative to paragraph (a) of this section, any party other than BLM may seek judicial review under 5 U.S.C. 704 of a final BLM grazing decision if the administrative law judge denies a petition for a stay, either directly or by failing to meet the deadline in § 4.472(d).

(c) If a party appeals under paragraph (a) of this section, the Board must issue an expedited briefing schedule and decide the appeal promptly.

(d) Unless the Board or a court orders otherwise, an appeal under paragraph (a) of this section does not—

(1) Suspend the effectiveness of the decision of the administrative law judge; or

(2) Suspend further proceedings before the administrative law judge.

(e) Any party adversely affected by the administrative law judge's decision on the merits has the right to appeal to the Board under the procedures in this part.

■ 8. Revise newly redesignated § 4.479 to read as follows:

§ 4.479 Effectiveness of decision during appeal.

(a) Consistent with the provisions of §§ 4.21(a) and 4.472(e) and except as provided in paragraphs (b) and (c) of this section or other applicable regulation, a final BLM grazing decision will not be effective—

(1) Until the expiration of the time for filing an appeal under § 4.470(a); and

(2) If a petition for a stay is filed under § 4.471(a), until the administrative law judge denies the petition for a stay or fails to act on the petition within the time set forth in § 4.472(d).

(b) Consistent with the provisions of §§ 4160.3 and 4190.1 of this title and notwithstanding the provisions of § 4.21(a), a final BLM grazing decision may provide that the decision will be effective immediately. Such a decision will remain effective pending a decision on an appeal, unless a stay is granted by an administrative law judge under § 4.472 or by the Board under § 4.478(a).

(c) Notwithstanding the provisions of § 4.21(a), when the public interest requires, an administrative law judge may provide that the final BLM grazing decision will be effective immediately.

(d) An administrative law judge or the Board may change or revoke any action that BLM takes under a final BLM grazing decision on appeal.

(e) In order to ensure exhaustion of administrative remedies before resort to court action, a BLM grazing decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless—

(1) A petition for a stay of the BLM decision has been timely filed and the BLM decision has been made effective under § 4.472(e), or

(2) The BLM decision has been made effective under paragraphs (b) or (c) of this section or other applicable regulation, and a stay has not been granted.

(f) Exhaustion of administrative remedies is not required if a stay would not render the challenged portion of the BLM decision inoperative under subpart 4160 of this title.

[FR Doc. 03–30631 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–79–P

DEPARTMENT OF ENERGY

48 CFR Parts 904, 923, 952, and 970

RIN 1991–AB54

Acquisition Regulations; Conditional Payment of Fee, Profit, and Other Incentives

AGENCY: Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy publishes interim final amendments to its Acquisition Regulation setting forth policies for reductions of fee or other amounts payable to DOE prime contractors because of contractor performance failures related to safeguarding of classified information and to adequate protection of environment, health and safety, including the health and safety of workers, at contractor operated sites.

DATES: This rule is effective January 9, 2004. Written comments on specified portions of this interim final rule

implementing section 234C of the Atomic Energy Act must be received by January 26, 2004.

ADDRESSES: Comments (3 copies) on the specified portions of this interim final rule should be addressed to: Michael L. Righi, U.S. Department of Energy, Office of Procurement and Assistance Policy, ME–61, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Michael L. Righi, Office of Procurement and Assistance Policy (ME–61), 202–586–8175 or *michael.righi@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the Atomic Energy Act of 1954 (Atomic Energy Act) and other laws, the Department of Energy (DOE or Department) carries out a variety of national defense and energy research, development, and demonstration activities at facilities around the nation that are owned by the United States, under the custody and control of DOE, and operated by prime contractors under the supervision of DOE. On February 1, 2001, DOE published a Notice of Proposed Rulemaking (NOPR) (66 FR 8560) to amend portions of the DOE Acquisition Regulation (DEAR) (48 CFR chapter 9) that apply to these prime contractors. The NOPR contained proposed regulatory amendments dealing with reductions in fee and other payments to these contractors as a result of performance failures in carrying out contract obligations related to: (1) Safeguarding classified information; and (2) protection of environment, health and safety, including the health and safety of workers at contract sites. Although this rulemaking is generally authorized by the Atomic Energy Act (42 U.S.C. 2201), the portion of the proposed rule dealing with safeguarding classified information responded to specific statutory directions in section 234B of the Atomic Energy Act (42 U.S.C. 2282b). Subsequent to publication of the proposed rule, the President signed into law a new section 234C, which contains reduction in fee provisions similar to those in section 234B and provides specific directions with regard to protection of worker health and safety.

Today, DOE publishes a notice of interim final rulemaking that responds to the comments on the proposed rule and contains interim final regulatory amendments to the DEAR pursuant to general Atomic Energy Act authorities, as well as pursuant to the specific terms of sections 234B and 234C of the Atomic Energy Act. Since the provisions of section 234C are substantially similar to those of section 234B, DOE does not believe that there are policy issues with regard to section 234C that differ from those concerning section 234B. However, in addition to its review of comments submitted during the comment period on the NOPR, DOE is inviting public comment limited to the portions of the interim final amendments to the DEAR that implement section 234C to ensure that DOE has not overlooked any subtle, relevant issues that are unique to section 234C. Those portions of the interim final rule are specifically identified in part III of this **SUPPLEMENTARY INFORMATION.**

II. Background

Section 3147 of the National Defense Authorization Act for Fiscal Year 2000 added section 234B to the Atomic Energy Act (42 U.S.C. 2282b). Section 234B requires, in part, that DOE contracts provide for an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation, or order relating to the safeguarding or security of restricted data or other classified or sensitive information. Section 234B also prescribes that the implementing regulations must specify various degrees of violations and the amount of the reduction attributable to each degree of violation. Section 234B applies to prime contractors, including management and operating (M&O) contractors and certain non-M&O contractors.

Recent legislation, section 3173 of the National Defense Authorization Act for Fiscal Year 2003, which adds section 234C to the Atomic Energy Act (42 U.S.C. 2282c), requires the Department to include in each contract with a contractor of the Department who has entered into an agreement of Price Anderson indemnification (48 CFR 952.250–70) clauses that provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any regulation promulgated to protect worker safety and health (WS&H). Section 234C also requires that contract provisions specify various degrees of violations and the amount of reduction attributable to each degree of violation. The Department is planning a rulemaking action to establish a new regulation at 10 CFR part 851 to set forth WS&H requirements and to address the civil penalty and enforcement aspects of section 234C. Section 234C specifies that in the event of a violation under the regulations, the Department may pursue either civil or contract penalties, but not both. In the case of non-profit entities described at 42 U.S.C. 2282a(d), the total amount of civil and contract penalties in a fiscal year may not exceed the total amount of fees paid by the Department to that entity in that fiscal year.

As opposed to the NOPR, which would have added two clauses, this interim final rule adds four clauses, three for other than management and operating contracts and one for management and operating contracts. The additional clauses reflect the requirements of section 234C.

Consistent with section 234B of the Atomic Energy Act, for other than management and operating contracts, this interim final rule adds a clause entitled, ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information'' to DEAR part 952. Except for DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, this clause is prescribed for use in all DOE contracts that involve or are likely to involve classified information but that do not include the clause at 48 CFR 952.250–70, Nuclear hazards indemnification agreement. The clause would provide for reductions of earned fee or profit that is otherwise payable under applicable contracts for contractor violations of laws, regulations, or directives relating to the safeguarding of restricted data and other classified information. Among other things, this clause would provide for fee reductions for violations related to the safeguarding of high risk nuclear weapons-related data. At present, this category consists of data covered by SIGMA 14 or SIGMA 15, but it may include other categories of high risk

nuclear weapons-related data should the Department designate additional categories in the future. The clause sets forth the conditions that may precipitate a reduction of fee or profit and percentage reduction ranges that correlate to three degrees of violations.

Consistent with section 234B and C of the Atomic Energy Act, for other than management and operating contracts, this interim final rule adds a clause entitled, ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health'' to DEAR part 952. Except for DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, this clause is prescribed for use in all DOE contracts that involve or are likely to involve classified information and that also include the clause at 48 CFR 952.250–70, Nuclear hazards indemnification agreement. The clause would provide for reductions of earned fee or profit that is otherwise payable under applicable contracts for contractor violations of laws, regulations, or directives relating to the safeguarding of restricted data and other classified information or relating to worker safety and health. The clause sets forth the conditions that may precipitate a reduction of fee or profit and percentage reduction ranges that correlate to three degrees of violations.

Consistent with section 234C of the Atomic Energy Act, for other than management and operating contracts, this interim final rule adds a clause entitled, ''Conditional Payment of Fee or Profit-Protection of Worker Safety and Health'' to DEAR part 952. Except for DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, this clause is prescribed for use in all DOE contracts that do not involve and are not likely to involve classified information and that do include the clause at 48 CFR 952.250–70, Nuclear hazards indemnification agreement. The clause would provide for reductions of earned fee or profit that is otherwise payable under applicable contracts for contractor violations of laws, regulations, or directives relating to worker safety and health. The clause sets forth both the conditions that may precipitate a reduction of fee or profit and the percentage reduction ranges that correlate to three degrees of violations.

Consistent with section 234B and C of the Atomic Energy Act, for DOE management and operating contracts and other contracts designated by the Procurement Executive, the clause at 48 CFR 970.5215–3, ''Conditional Payment of Fee, Profit, or Other Incentives—Facility Management Contracts,'' provides for reductions of earned fee, fixed fee, profit, or share of cost savings that may otherwise be payable under the contract if: Performance failures relating to environment, safety and health (ES&H) or the safeguarding of restricted data and other classified information occur (the basic clause); or performance failures relating to ES&H occur (Alternate I of the clause). The clause sets forth the conditions that may precipitate a reduction of earned or fixed fee, profit, or share of cost savings under the contract. The clause also sets forth the percentage fee, profit, or share of cost savings reduction ranges that correlate to the three degrees of performance failures relating to ES&H and to the three degrees of performance failures relating to safeguarding of restricted data and other classified information.

A large number of comments DOE received related to the mitigating factors to be considered before a fee reduction by the contracting officer. The provisions in the NOPR permitted consideration of mitigating factors, but did not make consideration of mitigating factors mandatory. In today's interim final rule, the Department has changed the proposed language so that it is now mandatory for a contracting officer to consider mitigating factors when contemplating a fee reduction. DOE also added a non-exhaustive list of mitigating factors that must be considered by the contracting officer.

Another significant number of comments DOE received related to the percentage fee reductions possible for second and third degree performance failures and the descriptions of what might constitute performance failures, especially ES&H failures. In this interim final rule, the Department has changed the proposed rule language to lower the percentage fee reduction for second and third degree performance failures (from maximums of 50 percent and 25 percent to maximums of 25 percent and 10 percent, respectively) and shortened and simplified the description of performance failures for ES&H issues. Additionally, the interim final rule includes language making it clear that performance failures only occur if the contractor does not comply with the related terms and conditions of the contract. The mere occurrence of an event does not necessarily create the potential for a fee reduction.

The numbering system in this interim final rule differs from the one in the NOPR because it conforms to the new DEAR numbering system established by the final rule published in the **Federal Register** on December 22, 2000 (65 FR 80993), titled ''Rewrite of Regulations Governing Management and Operating Contracts.''

Contracting officers must apply these DEAR changes to solicitations issued on or after the effective date of this rule.

Contracting officers may, at their discretion, include these DEAR changes in solicitations issued before the effective date of this rule, provided award of the resulting contract(s) occurs on or after the effective date.

Contracting officers must apply these DEAR changes: to contracts extended in accordance with the Department's extend/compete policies and procedures (48 CFR 917.6, 48 CFR 970.1702–1(a), and internal guidance) if the extend/compete decision is made on or after the effective date of this rule, and to options exercised under competitively awarded management and operating contracts (48 CFR 970.1702–1(b)).

In preparing this notice of interim final rulemaking the Department has made a variety of technical changes, which do not warrant extended discussion.

III. Scope of Further Opportunities for Public Comment

The NOPR of February 1, 2001, contained proposed amendments to the DEAR that are consistent with the subsequently enacted requirements of section 234C. A few minor amendments have been necessary to the originally proposed language to specifically address the new section 234C. The amendments are the interim rule portion of this interim final rule. The amendments are: (1) Revised language at DEAR 970.1504–1–2(i)(1) and at 970.5215–3(a)(1)(i) making it clear that the term ''environment, safety and health (ES&H)'' also includes ''worker safety and health (WS&H)''; (2) a new paragraph (c) is added to DEAR 970.2303–1; (3) a new paragraph (b) is added to DEAR 923.7001; (4) new paragraphs (f) and (g) are added to DEAR 923.7002; and (5) new clauses are added at DEAR 952.223–76 and at DEAR 952.223–77. DOE today provides an opportunity for public comment limited to these five regulatory amendments and relevant issues unique to implementing section 234C.

IV. Discussion of Public Comments

This section of the Supplementary Information addresses the major issues that emerged from the public comments. Many of the comments received in response to the NOPR raised issues related to the civil penalty requirements of section 234B, which were outside the

scope of this fee reduction rule, since this rulemaking only addresses the contractual provisions and fee reduction aspects of the statute. The Department always intended to conduct two separate rulemakings, one establishing civil penalty procedural rules similar to the procedural rules to achieve compliance with DOE nuclear safety requirements found at 10 CFR part 820 and the other establishing procurement clauses like those in this rulemaking action. To establish procedural rules, on April 1, 2002, the Department published a second NOPR (67 FR 15339) to implement subsections a, c and d of section 234B. In the second NOPR, the Department proposed to establish a new part 824 to chapter III of title 10 of the Code of Federal Regulations (CFR) to implement all subsections of section 234B of the Atomic Energy Act, except subsection b. A number of the comments received in response to the first NOPR, intended to implement section b of section 234B, were addressed by the publication of the second NOPR, intended to implement subsections a, c and d of section 234B, and need not be addressed at length in this notice.

Other major issues emerging from the public comments on the proposed rule are discussed below. Sixteen respondents submitted comments to the Department.

Mitigating Factors

Comment: Respondents stated that the proposal lacked a sense of proportion between the seriousness of the violation and the contractor's culpability and that fee reductions should decrease as contractor culpability decreases. Others advocated the use of fault based standards for determining amount of fee reductions and that the Department should exclude matters beyond the contractor's control.

Response: These comments regarding the issue of taking into account mitigating circumstances are addressed in the interim final rule through the addition in each of the contract provisions of a statement that the contractor's overall performance on an issue be considered and a mandatory requirement that a list of mitigating factors be considered.

Comment: Respondents were concerned about the risk of violations and resultant fee reductions that could result from changing contract requirements under the directives system.

Response: The DEAR Laws, regulations, and DOE directives clause allows for contract changes when contract requirements change due to a new or modified directive. The contract changes include changes to any contract term or condition, including cost or schedule, that are appropriate. Therefore, any change to the risk of fee reduction that could result from changing contract requirements under the directives system, whether it be increased risk or decreased risk of fee reduction, can be fairly handled under the clause. In those instances where DOE lays new safety or security requirements on the contractor, the contractor must be given adequate time to comply with the new requirements.

Comment: Respondents stated that contractors should not be penalized with a fee reduction for self reporting a problem.

Response: The Department agrees and self reporting has been included in the list of mitigation factors.

E,S&H

Comment: Respondents recommended DOE eliminate the proposed rule's ES&H coverage because it goes beyond the focus in section 234B of the Atomic Energy Act on security issues and is covered adequately by the current clause.

Response: The NOPR covered issues not addressed in the current DEAR clause because the Department determined it was appropriate to address ES&H-related fee reductions in the same manner as security-related fee reductions. The Department's decision to include degrees of violation for ES&H-related fee reductions was fortuitous since, as discussed in an earlier section of this notice, the Department must now address a statutory requirement for fee reductions for violations related to worker safety and health concerns. The new provisions are required to specify various degrees of violations and amount of reduction attributable to each degree of violation. The new requirement is similar to that contained in section 234B of the Atomic Energy Act, which was focused on security concerns.

The Department's proposed rule also included other potential improvements. The current DEAR clause addressing conditional payment of fee, for example, does not require DOE to consider mitigating circumstances for ES&H performance failures that are not catastrophic in determining fee reductions. Nor does it require, for a catastrophic event, both a failure to comply with the ES&H terms and conditions and a negative result before a fee reduction can be imposed. Rather it merely requires that an event occur. Further, the current clause does not limit performance failures for ES&H or catastrophic events to 25 percent (second degree) or 10 percent (third degree) for lesser failures, since it does not address degrees of failure.

Comment: Respondents stated that the proposed language regarding performance failures for ES&H issues was too subjective or vague.

Response: To satisfy respondents' comments, in this interim final rule, a number of changes have been made to the ES&H-related provisions. The language describing the degrees of performance failure has been streamlined, the criteria for failure determinations have been more clearly oriented to the terms of an individual contract, and the consideration of mitigating factors has become more focused on systemic rather than individual failures.

Appeal Process

Comment: Respondents stated that the fee reduction provisions should be subject to the disputes clause and not left to the unilateral discretion of the contracting officer.

Response: Fee reductions are subject to the disputes clause. The contractor will continue to have appeal rights under the Contract Disputes Act notwithstanding the fact that the contract gives the contracting officer unilateral discretion to make determinations for fee reductions. However, the inclusion of this contract term raises the standard of review to arbitrary or capricious conduct by the fee determination official. *See Burnside-Ott Aviation Training Center* v. *Dalton,* 107 F.3rd 854 (Fed. Cir. 1997).

Security Issues

Comment: Respondents stated that the Department should not make fee reductions for security violations in instances where the violations related to problems inherited by the current contractor, such as documents already misclassified sometime in the past.

Response: While the mitigating factors now listed in the clauses do not specifically use the term pre-existing condition, this is the type of situation contemplated by the mitigating factors. The first mitigating factor, for example, is ''Degree of control the contractor had over the event or incident.''

Comment: Respondents stated that the proposed language was too subjective or vague for the associated penalties. Phrases such as ''reasonably expected to result in'' and ''threaten the successful completion of'' were considered too vague for descriptions that could result in fee reductions. Some suggestions were to:

—Define ''exceptionally grave damage, serious damage, *etc.*'';
—Define ''safeguards and security management system'' breakdown;
—Define or eliminate ''that can reasonably be expected to result in'' damage to national security;
—Eliminate conduct ''creating a risk'' of harm (basing fee reductions on incidents that merely create risk is too subjective);
—Eliminate ''or performance failures of similar import'';

Respondents also stated that since risk is always present, fee reductions should not be imposed for risk. They stated that the rule would undo current standards of acceptable risk in safeguarding classified information, which set appropriate levels of protection against risk based on vulnerability/risk analyses.

Response: The terms used in the proposed rule and this interim final rule are found in DOE Directives, Executive Orders, and the National Industrial Security Program. As for risk, the Department understands risk is present. The interim final rule makes it clear that fee reductions related to a security violation are only possible if there is a performance failure related to a security violation and that failure is the cause of an undesirable outcome, such as events that cause or could reasonably be expected to cause damage to the national security.

Comment: A number of respondents stated that the fee reductions should be tied to a site specific plan that is part of the security agreement between DOE and contractor. That plan would cite controlling directives, the contractor's security plan, and define degrees of performance failure.

Response: The interim final rule specifically allows for site specific performance criteria/requirements that provide additional definition, guidance for the amount of the reduction, or guidance for the applicability of mitigating factors.

Other Issues

Comment: Respondents stated that there should be a distinction in the rule between contracts that have evaluation periods of different lengths.

Response: DOE disagrees because the parties are free to negotiate appropriate evaluation period lengths, taking into account all the elements of the contract to include, among other things, desired outcomes, equitable allocation of risks, suitable rewards, and potential fee reductions for ES&H or security performance failures.

V. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.* DOE has reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Because DOE is contractually obligated to reimburse contractors for the cost of complying with regulatory requirements, the rule will not have a significant economic impact on small entities. Since it is clear that the rule will not have an adverse economic impact, there is no need to determine the exact number of small contractors that might be affected by the new requirements. On the basis of the foregoing, DOE certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE did not prepare a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by today's regulatory action.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of

Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995.

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Small Business Regulatory Enforcement Fairness Act.

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's interim final rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

Issuance of this interim final rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 904, 923, 952, and 970

Government procurement.

Issued in Washington, DC on December 2, 2003.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, DOE amends chapter 9 of title 48 of the Code of Federal Regulations as set forth below.

■ 1. The authority citation for parts 904 and 952 is revised to read as follows:

Authority: 42 U.S.C. 2201, 2282a, 2282b, 2282c, 7101 *et seq.;* 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

PART 904—ADMINISTRATIVE MATTERS

■ 2. Section 904.402 is amended by adding a new paragraph (c) to read as follows:

904.402 General.

* * * * *

(c)(1) Section 234B of the Atomic Energy Act (42 U.S.C. 2282b) requires that DOE contracts include a clause that provides for an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause is required for all DOE prime contracts that involve any possibility of contractor access to Restricted Data or other classified information. The clause is required to specify various degrees of violations and the amount of the reduction attributable to each degree of violation. The clause prescribed at 48 CFR 904.404(d)(6) (Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information) or the clause prescribed at 48 CFR 923.7002(f) (Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health) shall be used for this purpose unless the clause prescribed at 48 CFR 970.1504–5(c) (Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts) is used.

(2) The clause entitled ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information'' and the clause entitled ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other

Classified Information and Protection of Worker Safety and Health'' provide for reductions of fee or profit that is earned by the contractor depending upon the severity of the contractor's failure to comply with contract terms or conditions relating to the safeguarding of Restricted Data or other classified information. When reviewing performance failures that would otherwise warrant a reduction of earned fee, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. Some of the mitigating factors that must be considered are specified in the clause.

(3) The contracting officer must obtain the concurrence of the Head of the Contracting Activity:

(i) Prior to effecting any reduction of fee or amounts otherwise payable to the contractor in accordance with the terms and conditions of the clause entitled ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information'' or of the clause entitled ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health;'' and

(ii) For determinations that no reduction of fee is warranted for a particular performance failure(s) that would otherwise warrant a reduction.

■ 3. Section 904.404 is amended by adding a new paragraph (d)(6) to read as follows:

904.404 Solicitation provision and contract clause. [DOE Coverage—Paragraph (d)]

(d) * * *

(6) Except as prescribed in 48 CFR 970.1504–5(c), the contracting officer shall insert the clause at 48 CFR 952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information, in all contracts that contain the clause at 48 CFR 952.204–2, Security, but that do not contain the clause at 48 CFR 952.250–70, Nuclear hazards indemnity agreement.

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 4. Section 923.7002 is redesignated as § 923.7003 and a new § 923.7002 is added to read as follows:

923.7002 Worker Safety and Health.

(a)(1) Except when the clause prescribed at 48 CFR 970.1504–5(c) is used, the clauses entitled ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health'' and ''Conditional Payment of Fee or Profit—Protection of Worker Safety and Health'' implement the requirements of section 234C of the Atomic Energy Act for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns. The clauses, in part, provide for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to worker safety and health violations under the Department's regulations.

(2) The clauses provide for reductions of fee or profit that is earned by the contractor depending upon the severity of the contractor's failure to comply with contract terms or conditions relating to worker safety and health concerns. When reviewing performance failures that would otherwise warrant a reduction of earned fee, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clauses. Some of the mitigating factors that must be considered are specified in the clauses.

(3) The contracting officer must obtain the concurrence of the Head of the Contracting Activity—

(i) Prior to effecting any reduction of fee or amounts otherwise payable to the contractor in accordance with the terms and conditions of the clause entitled ''Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health'' or of the clause entitled ''Conditional Payment of Fee or Profit—Protection of Worker Safety and Health''; and

(ii) For determinations that no reduction of fee is warranted for a particular performance failure(s) that would otherwise warrant a reduction.

(4) Section 234C of the Atomic Energy Act provides that DOE shall either pursue civil penalties (implemented at 10 CFR part 851) for a violation under section 234C of the Atomic Energy Act (42 U.S.C. 2282c) or a contract fee reduction, but not both.

(5) The contracting officer must coordinate with the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Environment, Safety and Health (or with any designated successor office) before pursuing a contract fee reduction in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker health and safety concerns.

■ 5. Redesignated § 923.7003 is further amended by adding a new paragraphs (f) and (g) to read as follows:

923.7003 Contract clauses.

* * * * *

(f) Except as prescribed in 48 CFR 970.1504–5(c), the contracting officer shall insert the clause at 48 CFR 952.223–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, in all contracts that contain both the clause at 48 CFR 952.204–2, Security, and the clause at 48 CFR 952.250–70, Nuclear hazards indemnity agreement.

(g) Except as prescribed in 48 CFR 970.1504–5(c), the contracting officer shall insert the clause at 48 CFR 952.223–77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health, in all contracts that do not contain the clause at 48 CFR 952.204–2, Security, but that do contain the clause at 48 CFR 952.250–70, Nuclear hazards indemnity agreement.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Section 952.204–76 is added in Subchapter H to read as follows:

952.204–76 Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information.

As prescribed at 48 CFR (DEAR) 904.404(d)(6), insert the following clause.

Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information (JAN 2004)

(a) General. (1) The payment of fee or profit (*i.e.,* award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (*i.e.,* Formerly Restricted Data and National Security Information) including compliance with applicable law, regulation, and DOE directives. The term ''contractor'' as used in this clause to address failure to comply shall mean ''contractor or contractor employee.''

(2) In addition to other remedies available to the Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information, the contracting officer may unilaterally reduce the amount of fee or

profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted data or other classified information pursuant to the degrees specified in paragraph (c) of this clause.

(b) Reduction Amount. (1) If in any period (*see* 48 CFR 952.204–76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26 percent nor greater than 100 percent of the total fee or profit earned for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (*see* 48 CFR 904.402(c)). The mitigating factors include, but are not limited to, the following:

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of safeguarding Restricted Data and other classified information and compliance in related security areas.

(2)(i) Except in the case of performance-based firm-fixed-price contracts (see paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [insert 6 or 12] months to run sequentially for the entire term of the contract (*i.e.,* from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information.

(c) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:

(1) *First Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) *Second Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Sceret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(3) *Third Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(End of Clause)

■ 7. Section 952.223–76 is added to read as follows:

952.223–76 Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health.

As prescribed at 48 CFR (DEAR) 923.7002(f), insert the following clause.

Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health (JAN 2004)

(a) General. (1) The payment of fee or profit (*i.e.,* award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the

terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (*i.e.,* Formerly Restricted Data and National Security Information) and relating to the protection of worker safety and health, including compliance with applicable law, regulation, and DOE directives. The term ''contractor'' as used in this clause to address failure to comply shall mean ''contractor or contractor employee.''

(2) In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information or relating to the protection of worker safety and health, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted data or other classified information or relating to worker safety and health pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(b) Reduction Amount. (1) If in any period (*see* 48 CFR 952.223–76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information or relating to the protection of worker safety and health, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26 percent nor greater than 100 percent of the total fee or profit earned for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (*see* 48 CFR 904.402(c) and 48 CFR 923.7001(b)). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii), and (viii) apply to WS&H only):

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: Safeguarding Restricted Data and other classified information and compliance in related security areas; or of protecting WS&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (*e.g.,* Voluntary Protection Program Star Status).

(vi) Event caused by ''Good Samaritan'' act by the contractor (*e.g.,* offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain WS&H performance (including effective resource allocation) and to support DOE corporate decision-making (*e.g.,* policy, WS&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(2)(i) Except in the case of performance-based, firm-fixed-price contracts (*see* paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [insert 6 or 12] months to run sequentially for the entire term of the contract (*i.e.,* from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information and relating to protection of worker safety and health.

(c) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:

(1) *First Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other classified information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) *Second Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(3) *Third Degree:* Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(d) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

(1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:

(i) Type A accident (defined in DOE Order 225.1A).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (*e.g.*, Federal) oversight and/or reported per DOE Order 232.1A requirements, or internal oversight of DOE O 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (*e.g.*, Federal) oversight that in aggregate indicate a significant WS&H system breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(End of Clause)

■ 8. Section 952.223–77 is added to read as follows:

952.223–77 Conditional Payment of Fee or Profit—Protection of Worker Safety and Health.

As prescribed at 48 CFR (DEAR) 923.7002(g), insert the following clause.

Conditional Payment of Fee or Profit—Protection of Worker Safety and Health (JAN 2004)

(a) General. (1) The payment of fee or profit (*i.e.*, award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the protection of worker safety and health (WS&H), including compliance with applicable law, regulation, and DOE directives. The term ''contractor'' as used in this clause to address failure to comply shall mean ''contractor or contractor employee.''

(2) In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the protection of worker safety and health, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to worker safety and health pursuant to the degrees specified in paragraph (c) of this clause.

(b) Reduction Amount. (1) If in any period (*see* 48 CFR 952.223–77 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the protection of worker safety and health, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (*see* 48 CFR 923.7001(b)). The mitigating factors include, but are not limited to, the following:

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of protecting WS&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (*e.g.*, Voluntary Protection Program Star Status).

(vi) Event caused by ''Good Samaritan'' act by the contractor (*e.g.*, offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain WS&H performance (including effective resource allocation) and to support DOE corporate decision-making (*e.g.*, policy, WS&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(2)(i) Except in the case of performance based firm-fixed-price contracts (*see* paragraph (b)(3) below), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [insert 6 or 12] months to run sequentially for the entire term of the contract (*i.e.*, from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the protection of worker safety and health.

(c) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

(1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:

(i) Type A accident (defined in DOE Order 225.1A).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (*e.g.*, Federal) oversight and/or reported per DOE Order 232.1A requirements, or internal oversight of DOE O 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (*e.g.*, Federal) oversight that in aggregate indicate a significant WS&H system breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(End of Clause)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 9. The authority citation for Part 970 is revised to read as follows:

Authority: 42 U.S.C. 2201, 2282a, 2282b, 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

■ 10. Section 970.0404–2 is amended by adding paragraph (c) to read as follows:

970.0404–2 General.

* * * * *

(c) For DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, the clause entitled, ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,'' implements the requirements of section 234B of the Atomic Energy Act (*see* 48 CFR 904.402(c)(1)) for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause, in part, provides for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to the safeguarding of Restricted Data and other classified information.

■ 11. Section 970.1504–1–2 is amended by adding new paragraph (i) to read as follows:

970.1504–1–2 Fee policy.

* * * * *

(i)(1) In addition to other performance requirements specified in the contract, DOE management and operating contractors and other contractors designated by the Procurement Executive, or designee, are subject to performance requirements relating to: environment, safety, and health (ES&H), including worker safety and health (WS&H); and safeguarding of Restricted Data and other classified information. Performance requirements relating to ES&H will be set forth in the contract's ES&H terms and conditions, including a DOE approved Integrated Safety Management System (ISMS), or similar document. As applicable, performance requirements relating to the safeguarding of Restricted Data and other classified information will be set forth in the clauses of the contract entitled ''Security'' and ''Laws, Regulations, and DOE Directives,'' as well as in other terms and conditions that prescribe requirements for the safeguarding of Restricted Data and other classified information.

(2) If the contractor does not meet the performance requirements of the contract relating to ES&H or to the safeguarding of Restricted Data and other classified information, otherwise earned fee, fixed fee, profit, or share of cost savings may be unilaterally reduced by the contracting officer in accordance with the clause entitled ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts.''

(3) The clause entitled ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,'' provides for reductions of earned fee, fixed fee, profit, or share of cost savings under the contract depending upon the severity of the contractor's performance failure relating to ES&H requirements and, if applicable, relating to the safeguarding of Restricted Data and other classified information. When reviewing performance failures that would otherwise warrant a potential reduction of earned fee, fixed fee, profit, or share of cost savings, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. Some of the mitigating factors that must be considered are included in the clause.

(4) The contracting officer must obtain the concurrence of the cognizant Program Secretarial Officer

(i) Prior to effecting any reduction of fee or profit in accordance with the terms and conditions of the clause entitled, ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts;'' and

(ii) For determinations that no reduction of fee or profit is warranted for a particular performance failure(s) that would otherwise be subject to a reduction.

970.1504–1–3 [Amended]

■ 12. Section 970.1504–1–3 is amended in paragraph (c)(1) in the last sentence by removing ''Conditional Payment of Fee, Profit, or Incentives'' and adding in its place ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts.''

■ 13. Section 970.1504–5 is amended by revising the heading and revising paragraph (c) to read as follows:

970.1504–5 Solicitation provision and contract clauses.

* * * * *

(c)(1) The contracting officer shall insert the clause at 48 CFR 970.5215–3,

Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts, in all DOE management and operating contracts and other contracts determined by the Procurement Executive, or designee.

(2) The contracting officer shall include the clause with its Alternate I in contracts that do not contain the clause at 48 CFR 952.204–2, Security.

(3) The contracting officer shall include the clause with its Alternate II in contracts that are awarded on a cost-plus-award-fee basis. The contracting officer should consider including the clause with its Alternate II in contracts that are awarded on a multiple fee basis if the cost-plus-award-fee portion of the contract is significant.

* * * * *

■ 14. Section 970.2303–1 is amended by adding paragraph (c) to read as follows:

970.2303–1 General.

* * * * *

(c)(1) For DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, the clause entitled ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts'' implements the requirements of section 234C of the Atomic Energy Act for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns. The clause, in part, provides for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to worker safety and health violations under the Department's regulations.

(2)(i) Section 234C of the Atomic Energy Act states that DOE shall either pursue civil penalties (implemented at 10 CFR part 851) for a violation under section 234C of the Atomic Energy Act (42 U.S.C. 2282c) or a contract fee reduction, but not both.

(ii) The contracting officer must coordinate with the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Environment, Safety and Health (or with any designated successor office) before pursuing contract fee reduction in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns.

970.5215–1 [Amended]

■ 15. Section 970.5215–1 is amended in paragraph (c)(3) in the last sentence by removing ''Conditional Payment of Fee, Profit, or Incentives'' and adding in its place ''Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts.''

■ 16. Section 970.5215–3 is revised to read as follows:

As prescribed in 48 CFR 970.1504–5(c)(1), insert the following clause:

970.5215–3 Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts (JAN 2004)

(a) General. (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon:

(i) The contractor's or contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

(ii) The contractor's or contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, ''Security'' and ''Laws, Regulations, and DOE Directives,'' as well as in other terms and conditions.

(4) If the contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, ''Total Available Fee: Base Fee Amount and Performance Fee Amount,'' otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount. (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26 percent nor greater than 100 percent of the amount of earned fee, fixed fee, profit, or the contractor's share of cost savings for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (*see* 48 CFR 970.1504–1–2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the contracting officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (*e.g.*, Voluntary Protection Program, ISO 14000).

(vi) Event caused by ''Good Samaritan'' act by the contractor (*e.g.*, offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (*e.g.*, policy, ES&H programs). * * *

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(4)(i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.

(ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the contracting officer or fee determination official as otherwise

payable based on the contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned (provisionally or otherwise), the contractor shall immediately return the excess to the Government. (What the contractor ''has earned'' reflects any reduction made under this or any other clause of the contract.)

(v) At the end of the contract:

(A) The Government will pay the contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned exceeds the sum of the payments the contractor has received; or

(B) The contractor shall return to the Government the amount by which the sum of the payments the contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the contractor has earned. (What the contractor ''has earned'' reflects any reduction made under this or any other clause of the contract.)

(c) Environment, Safety and Health (ES&H). Performance failures occur if the contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.

(i) Type A accident (defined in DOE Order 225.1A).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (*e.g.,* Federal) oversight and/or reported per DOE Order 232.1A requirements; or internal oversight of DOE Order 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (*e.g.,* Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(End of Clause)

Alternate I (JAN 2004). As prescribed in 48 CFR 970.1504–5(c)(2), replace paragraphs (a), (b)(1), (b)(2), and (b)(3) of the basic clause with the following paragraphs (a), (b)(1), (b)(2), and (b)(3) and delete paragraph (d).

(a) General. (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon the contractor's or contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS).

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) If the contractor does not meet the performance requirements of this contract relating to ES&H during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, ''Total Available Fee: Base Fee Amount and Performance Fee Amount,'' otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction Amount. (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraph (c) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26 percent nor greater than 100 percent of the amount of earned fee, fixed fee, profit, or the contractor's share of cost savings for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the contractor's overall performance in meeting the ES&H requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (*see* 48 CFR 970.1504–1–2). The mitigating factors include the following.

(i) Degree of control the contractor had over the event or incident.

(ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of ES&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (*e.g.,* Voluntary Protection Program Star Status, or ISO 14000 Certification).

(vi) Event caused by ''Good Samaritan'' act by the contractor (*e.g.,* offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (*e.g.,* policy, ES&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

Alternate II (JAN 2004). As prescribed in 48 CFR 970.1504–5(c)(3), insert the following as paragraphs (e) and (f) in contracts awarded on a cost-plus-award fee, incentive fee or multiple fee basis (if Alternate I is also used, redesignate the following as paragraphs (d) and (e)).

(e) Minimum requirements for specified level of performance. (1) At a minimum the contractor must perform the following:

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25 percent of the total available fee amount. Such 25 percent shall include base fee, if any.

(f) Minimum requirements for cost performance. (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25 percent of the total available fee amount. Such 25 percent shall include base fee, if any.

[FR Doc. 03–30364 Filed 12–9–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 120103F]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Fall Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the fall portion of the annual commercial quota for red snapper will be reached on December 7, 2003. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective noon, local time, December 7, 2003, until noon, local time, on February 1, 2004.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2003. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available fall commercial quota of 1.60 million lb (0.73 million kg) for red snapper will be reached when the fishery closes at noon on December 7, 2003. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on February 1, 2004. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, December 7, 2003.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The 2003 recreational red snapper season opened on April 21, 2003, and closed on October 31, 2003. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, December 7, 2003, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: December 4, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30607 Filed 12–5–03; 2:41 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 237
Wednesday, December 10, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1168]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation B, which implements the Equal Credit Opportunity Act, and the staff commentary to the regulation. Regulation B would be revised to define more specifically the standard for providing ''clear and conspicuous'' disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations E, M, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1168 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Minh-Duc Le, Senior Attorney, and David A. Stein, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant's national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).

In addition to a general prohibition against discrimination, the regulation contains specific rules concerning: the taking and evaluation of credit applications, how credit history information is reported on accounts used by spouses, procedures and notices for credit denials and other adverse action, and limitations on requiring signatures of persons other than the applicant on credit documents. The act also excepts certain types of credit (such as securities credit) from some requirements, and provides model forms for optional use by creditors. The ECOA is implemented by the Board's Regulation B (12 CFR part 202). An official staff commentary interprets the requirements of Regulation B (12 CFR part 202 (Supp. I)).

II. Proposed Revisions

Section 202.2—Definitions

2(bb) Clear and Conspicuous

The ECOA does not address a standard for the form of disclosures. Regulation B, however, requires creditors to disclose information provided in writing in a clear and conspicuous manner. *See* § 202.4(d). Guidance on how creditors may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comment 4(d)–1.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be ''clear and conspicuous'' under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and ''clear and readily understandable'' under Regulation E (Electronic Fund Transfers). In interpreting the ''clear and conspicuous'' standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be ''in a reasonably understandable'' form; similarly, under Regulation DD disclosures must be in a format that allows consumers ''to readily understand the terms of their account.'' For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be ''readily noticeable to the consumer.'' In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the ''clear and conspicuous'' standard to mean that a disclosure is ''reasonably understandable and designed to call attention to the nature and significance of the information'' in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation B by adding a definition of ''clear and conspicuous'' in § 202.2(bb), consistent with the ''clear and conspicuous'' definition in Regulation P. The staff commentary to Regulation B also would be revised to add comments 2(bb)–1 and –2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed

revisions to Regulations E, M, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Comment 2(bb)–3 would be added to clarify that the ''clear and conspicuous'' standard does not prohibit adding other terms to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(bb)–3 also would clarify, however, that the presence of other information may be a factor in determining whether the ''clear and conspicuous'' standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the ''clear and conspicuous'' standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(bb)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement.

To eliminate redundancy with proposed § 202.2(bb) and its accompanying commentary, the Board also proposes to revise comment 4(d)–1. Guidance regarding the ''clear and conspicuous'' standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1168 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov.*

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation B. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0201.

The collection of information that is revised by this rulemaking is found in 12 CFR part 202. This collection is mandatory to evidence compliance with the requirements of 15 U.S.C. 1691b(a)(1) and Pub. L. 104–208, § 2302(a), and also to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et seq.*).

Regulation B applies to all types of creditors, not just state member banks. However, under the Paperwork Reduction Act, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Federal Reserve. Appendix A of Regulation B defines these creditors as state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other agencies account for the paperwork burden for the institutions they supervise. Creditors are required to retain records for 12 to 25 months as evidence of compliance.

The proposed revisions would provide creditors with a more uniform definition of providing ''clear and conspicuous'' disclosures and examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation B and the staff commentary, it is expected that these revisions would not increase the paperwork burden of creditors. The estimated annual burden for entities supervised by the Federal Reserve is approximately 175,711 hours for the 1,312 creditors that are ''respondents'' for purposes of the Paperwork Reduction Act.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and record keeping requirements, Sex discrimination.

For the reasons set forth in the preamble, the Board proposes to amend Regulation B, 12 CFR part 202, as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.2 is amended by adding a new paragraph (bb) to read as follows:

§ 202.2 Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

* * * * *

(bb) Clear and conspicuous means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

* * * * *

3. In Supplement I to Part 202:

a. Under *Section 202.2 Definitions,* a new paragraph title *2(bb) Clear and conspicuous* is added, and new paragraphs (bb) 1. through (bb) 3. are added.

b. Under *Section 202.4—General Rules,* under *4(d) Form of Disclosures,* paragraph 1. is revised.

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.2 Definitions

* * * * *

2(bb) Clear and Conspicuous

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

* * * * *

Section 202.4—General Rules

* * * * *

4(d) Form of Disclosures

1. *Clear and conspicuous.* See § 202.2(bb) and accompanying comments.

[This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.]

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29942 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1169]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation E, which implements the Electronic Fund Transfers Act, and the staff commentary to the regulation. Regulation E would be revised to require disclosures to be ''clear and conspicuous'' and to define more specifically the standard to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, M, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1169 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Daniel Lonergan, Counsel, and Ky Tran-Trong, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Electronic Fund Transfers Act (EFTA), 15 U.S.C. 1693 *et seq.*, is to provide a basic framework for establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking program. The act and regulation require disclosure of terms and conditions of an EFT service; documentation of electronic transfers by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. Further, the act and regulation prescribe restrictions on the unsolicited issuance of ATM cards and other access devices. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). An Official Staff

Commentary interprets the requirements of Regulation E (12 CFR part 205 (Supp. I)).

II. Proposed Revisions

Section 205.2—Definitions

2(n) Clear and Conspicuous

Section 905(a) of the EFTA requires that disclosures be provided to consumers in readily understandable language. *See* 15 U.S.C. 1693c(a). The EFTA also requires that certain information about EFTs be ''clearly'' set forth on periodic statements and receipts from an electronic terminal. *See* 15 U.S.C. 1693d(a) and (c). This standard is implemented as ''clear and readily understandable'' in Regulation E. *See* § 205.4(a)(1).

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be ''clear and conspicuous'' under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and ''clear and readily understandable'' under Regulation E (Electronic Fund Transfers). In interpreting the ''clear and conspicuous'' standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be ''in a reasonably understandable'' form; similarly, under Regulation DD disclosures must be in a format that allows consumers ''to readily understand the terms of their account.'' For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be ''readily noticeable to the consumer.'' In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the ''clear and conspicuous'' standard to mean that a disclosure is ''reasonably understandable and designed to call attention to the nature and significance of the information'' in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides a series of examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

For the reasons set forth below and pursuant to its authority under sections 904(a) and 904(c) of the EFTA, the Board proposes to conform the general disclosure standard under Regulation E to ''clear and conspicuous.'' Further, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation E by adding a definition for clear and conspicuous in § 205.2(n), consistent with the ''clear and conspicuous'' definition in Regulation P. The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. The staff commentary to Regulation E also would be revised to add comments 2(n)-1 and -2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, M, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Additional information may accompany disclosures required under Regulation E. *See* § 205.4(b). Comment 2(n)–3 further clarifies that the ''clear and conspicuous'' standard does not prohibit adding other items to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(n)–3 would clarify, however, that the presence of other information may be a factor in determining whether the ''clear and conspicuous'' standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard. A new comment 4(b)–1 would be added to cross reference guidance in proposed comment 2(n)–3.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the ''clear and conspicuous'' standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(n)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

4(a)(1) Form of Disclosures

Under Section 905(a) of the EFTA, the terms and conditions of electronic fund transfers (EFTs) involving a consumer's account must be disclosed in ''readily understandable'' language. *See* 15 U.S.C. 1693c(a). The EFTA also requires that certain information about EFTs be ''clearly'' set forth on periodic statements and receipts from an electronic terminal. *See* 15 U.S.C. 1693d(a) and (c). These standards have been implemented as a general disclosure standard of ''clear and readily understandable.'' *See* § 205.4(a)(1). The Board proposes to revise that standard to ''clear and conspicuous.''

Regarding the standard of ''clear'' disclosures, the Board believes there is not a significant distinction between the term ''readily understandable'' as currently contained in section 905(a) of the EFTA and § 205.4(a)(1) of Regulation E and the term ''reasonably understandable'' as found in the guidance on the ''clear'' standard in other consumer protection regulations and in proposed § 205.2(n), and with the proposed revision, no substantive difference is intended. Regarding the standard of ''conspicuous'' disclosures, the Board believes that disclosures provided under the EFTA, like those provided under the other consumer financial services laws administered by the Board, should not only be clear, but also conspicuous, that is, noticeable to consumers to be effective.

The Board is authorized to prescribe regulations that contain provisions that in the judgment of the Board are necessary or proper to effectuate the purposes of the EFTA. *See* 15 U.S.C. 1693b(a) and (c). Thus, the proposed revisions would ensure that consumers receive disclosures of the terms and conditions of EFTs involving their account in a form that allows them to effectively exercise their rights under the EFTA and Regulation E. The Board proposes to exercise its authority under sections 904(a) and 904(c) of the EFTA to amend § 205.4(a)(1) to provide that disclosures required under Regulation E must be ''clear and conspicuous'' and consistent with the standard contained in other consumer protection regulations. Comment 4(a)–1 would be revised to conform to the amended disclosure standard. Guidance regarding the ''clear and conspicuous'' standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing

specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1169 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov.*

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation E. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0200.

The collection of information that is revised by this rulemaking is found in 12 CFR part 205. This collection is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of Regulation E and the Electronic Fund Transfer Act (EFTA). The respondents and recordkeepers are financial institutions. Institutions are required to retain records for twenty-four months. Regulation E applies to all types of financial institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of paperwork associated with the regulation only for the financial institutions it regulates and that meet the criteria set forth in the regulation. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would require disclosures to be provided ''clearly and conspicuously.'' The proposed revisions would provide financial institutions with a more uniform definition for ''clear and conspicuous'' disclosures and provide examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation E and the staff commentary, it is expected that these revisions would not increase the paperwork burden of financial institutions. With respect to state member banks, it is estimated that there are 1,289 respondents and recordkeepers. Current annual burden is estimated to be 48,868 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend Regulation E, 12 CFR part 205, as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693 *et seq.*

2. Section 205.2 is amended by adding a new paragraph (n) to read as follows:

§ 205.2 Definitions

For purposes of this part, the following definitions apply:

* * * * *

(n) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

* * * * *

3. Section 205.4 is amended by revising paragraph (a)(1) to read as follows:

§ 205.4 General disclosure requirements; jointly offered services

(a)(1) *Form of disclosures.* Disclosures required under this part shall be [clear and readily understandable] clear and conspicuous , in writing, and in a form the consumer may keep. A financial institution may use commonly accepted or [readily understandable] clear and conspicuous abbreviations in complying with the disclosure requirements of this part.

* * * * *

4. In Supplement I to Part 205:

a. Under Section 205.2—Definitions, a new paragraph title 2*(n) Clear and conspicuous* is added, and new paragraphs (n) 1. through (n) 3. are added.

b. Under Section 205.4—General Disclosure Requirements; Jointly Offered Services, under *4(a) Form of Disclosures,* paragraph 1. is revised.

c. Under Section 205.4—General Disclosure Requirements; Jointly Offered Services, a new paragraph title 4*(b) Additional information; disclosures required by other laws* is added, and a new paragraph 1. is added.

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.2—Definitions

* * * * *

2(n) Clear and Conspicuous

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

* * * * *

Section 205.4—General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

1. *General.* See § 205.2(n) and accompanying comments. [Although no particular rules govern type size, number of pages, or the relative conspicuousness of various terms,] The disclosures must be in a [clear and readily understandable] clear and conspicuous written form that the consumer may retain. Numbers or codes are permissible [are considered readily understandable] if explained elsewhere on the disclosure form.

* * * * *

4(b) Additional Information; Disclosures Required by Other Laws

1. *Clear and conspicuous.* See comment 2(n)–3.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29943 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1170]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation M, which implements the Consumer Leasing Act, and the staff commentary to the regulation. Regulation M would be revised to define more specifically the standard for providing ''clear and conspicuous'' disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1170 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel, and David A. Stein, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA requires lessors to provide lessees with uniform cost and other disclosures about certain consumer lease transactions. Disclosures are provided to consumers before they enter into lease transactions, when they renegotiate or extend a lease, and in advertisements that state the availability of consumer leases on particular terms. The act and regulation generally apply to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the regulation. The CLA is implemented by the Board's Regulation M (12 CFR part 213). An official staff commentary interprets the requirements of Regulation M (12 CFR part 213 (Supp. I)).

II. Proposed Revisions

Section 213.2—Definitions

2(q) Clear and Conspicuous

Section 182 of the CLA requires that lessors provide consumers with disclosures in a clear and conspicuous manner. *See* 15 U.S.C. 1667a. This standard is incorporated in Regulation M. *See* §§ 213.3(a) and 213.7(b). Guidance on how lessors may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comments 3(a)–2 and 7(b)–1. The commentary states that under this standard, disclosures must be in a reasonably understandable form.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be ''clear and conspicuous'' under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and ''clear and readily understandable'' under Regulation E (Electronic Fund Transfers). In interpreting the ''clear and conspicuous'' standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be ''in a reasonably understandable'' form; similarly, under Regulation DD disclosures must be in a format that allows consumers ''to readily understand the terms of their account.'' For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be ''readily noticeable to the consumer.'' In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the ''clear and conspicuous'' standard to mean that a disclosure is ''reasonably understandable and designed to call attention to the nature and significance

of the information'' in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation M by adding a definition for clear and conspicuous in § 213.2(q), consistent with the ''clear and conspicuous'' definition in Regulation P. The staff commentary to Regulation M also would be revised to add comments 2(q)–1 and –2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, Z and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the ''clear and conspicuous'' standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(q)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement. The proposal also would not affect other format rules, such as the existing requirement for segregating disclosures. *See* 12 CFR 213.3(a)(2).

To eliminate redundancy with proposed § 213.2(q) and its accompanying commentary, the Board also proposes to revise comment 3(a)–2 and 7(b)–1. Guidance regarding the ''clear and conspicuous'' standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1170 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov.*

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation M. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0202.

The collection of information that is revised by this rulemaking is found in 12 CFR part 213. This collection is mandatory (15 U.S.C. 1667 *et seq.* and Pub. L. 104–208, 110 Stat. 3009) to evidence compliance with the requirements of Regulation M and the Consumer Leasing Act (CLA). The respondents are individuals or businesses that regularly lease, offer to lease, or arrange for the lease of personal property under a consumer lease. Records, required in order to evidence compliance with the regulation, must be retained for twenty-four months. Regulation M applies to all types of lessors of personal property, not just state member banks; however, under the Paperwork Reduction Act regulations, the Federal Reserve accounts for the paperwork burden associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide lessors with a more uniform definition of providing ''clear and conspicuous'' disclosures and examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation M and the staff commentary, it is expected that these revisions would not increase the paperwork burden of lessors. With respect to state member banks, there are 310 respondents and recordkeepers. Current annual burden is estimated to be 11,179 hours for state member banks.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and record keeping requirements, Truth in Lending.

For the reasons set forth in the preamble, the Board proposes to amend Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f.

2. Section 213.2 is amended by adding a new paragraph (q) to read as follows:

§ 213.2 Definitions.

For the purposes of this part the following definitions apply:

* * * * *

(q) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

3. In Supplement I to Part 213:

a. Under Section *213.2—Definitions,* a new paragraph title 2(q) *Clear and conspicuous* is added, and new paragraphs (q)1. and (q)2. are added.

b. Under *Section 213.3—General Disclosure Requirements,* under *3(a) General Requirements,* paragraph 2. is revised.

c. Under *Section 213.7—Advertising,* under 7(b) *Clear and Conspicuous Standard,* paragraph 1. is revised.

Supplement to Part 213—Official Staff Commentary to Regulation M

* * * * *

Section 213.2—Definitions

* * * * *

2(q) Clear and Conspicuous

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

* * * * *

Section 213.3—General Disclosure Requirements

3(a) General Requirements

* * * * *

2. *Clear and conspicuous standard.* See § 213.2(q) and accompanying comments. [The clear and conspicuous standard requires that disclosures be reasonably understandable. For example, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other; appendix A of this part contains model forms that meet this standard. In addition, although no minimum typesize is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.]

* * * * *

Section 213.7—Advertising

* * * * *

7(b) Clear and Conspicuous Standard

1. *Standard.* See § 213.2(q) and accompanying comments. [The disclosures in an advertisement in any media must be reasonably understandable. For example,] Very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear[-]and[-]conspicuous standard if consumers cannot see and read or hear, and cannot comprehend, the information required to be disclosed.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29944 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1167]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation. Regulation Z would be revised to define more specifically the standard for providing ''clear and conspicuous'' disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions. The Board also is proposing to add an interpretative rule of construction to state that the word ''amount'' represents a numerical amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers' exercise of the right to rescind certain home-secured loans. In addition, the proposal includes several technical revisions to the staff commentary.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1167 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy and Elizabeth A. Eurgubian, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors. TILA is implemented by the Board's Regulation Z (12 CFR part 226). An official staff

commentary interprets the requirements of Regulation Z (12 CFR part 226 (Supp. I)).

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a)(27) Clear and Conspicuous

Section 122(a) of TILA requires disclosures to be made clearly and conspicuously. *See* 15 U.S.C. 1632. This standard is implemented in Regulation Z. *See* § 226.5(a)(1); § 226.17(a)(1); § 226.31(b). Guidance on how creditors may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comment 5(a)(1)–1; 17(a)(1)–1. The commentary states that under this standard, disclosures must be in a reasonably understandable form. For purposes of the disclosures provided with credit card solicitations and applications, the commentary also notes that disclosures must be readily noticeable to the consumer. *See* comment 5a(a)(2)–1.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be ''clear and conspicuous'' under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and ''clear and readily understandable'' under Regulation E (Electronic Fund Transfers). In interpreting the ''clear and conspicuous'' standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be ''in a reasonably understandable'' form; similarly, under Regulation DD disclosures must be in a format that allows consumers ''to readily understand the terms of their account.'' In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the ''clear and conspicuous'' standard to mean that a disclosure is ''reasonably understandable and designed to call attention to the nature and significance of the information'' in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides a series of examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation Z by adding a definition for clear and conspicuous in § 226.2(a)(27), consistent with the ''clear and conspicuous'' definition in Regulation P. The staff commentary to Regulation Z also would be revised to add comments 2(a)(27)–1 and –2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, M, and DD appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Proposed comments 2(a)(27)–3 and –4 contain guidance currently in comment 5(a)(1)–1. The ''clear and conspicuous'' standard does not prohibit adding other items to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(a)(27)–3 would clarify, however, that the presence of other information may be a factor in determining whether the ''clear and conspicuous'' standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the ''clear and conspicuous'' standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(a)(27)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type size requirement. Similarly, the proposal also would not affect other format rules, such as the existing requirement for making some disclosures more conspicuous than others (*See* § 226.5(a)(2); § 226.17(a)(2)), or segregating some specific information (*See* § 226.17(a)(1)).

To eliminate redundancy with proposed § 226.2(a)(27) and its accompanying commentary, the Board also proposes to revise the following commentary provisions in Regulation Z that address the ''clear and conspicuous'' standard: comments 5(a)(1)–1, 5a(a)(2)–1, 16–1, 24–1, and Appendix K (d)(2)–1. In this regard, in comment 5a(a)(2)-1, the guidance regarding disclosures for credit card applications and solicitations that are transmitted by electronic communication, has been deleted. Guidance regarding the ''clear and conspicuous'' standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

2(b) Rules of Construction

The Board proposes to add an interpretative rule of construction in § 226.2(b)(5) stating that where the word ''amount'' is used to describe a disclosure requirement it refers to a numerical amount throughout Regulation Z. This interpretation addresses a matter discussed in a recent court decision regarding the disclosure of payments scheduled to repay a closed-end credit transaction. *See* 15 U.S.C. 1638(a)(6); 12 CFR 226.18(g). The Board believes that the decision, by endorsing narrative descriptions of amounts rather than numerical amounts, may lead to confusion in disclosures.

The term ''amount'' has general applicability throughout Regulation Z and the term ''amount'' is used throughout TILA, for example, to describe disclosures such as the amount financed, the amounts being disbursed to the consumer and to third parties, and the total of payments, which is defined as the amount the consumer will have paid after making all scheduled payments. A broad interpretation of the term suggesting that narrative descriptions may replace numerical ''amounts'' contravenes TILA's purpose to provide consumers with clear and uniform credit disclosures. Proposed comment 2(b)–2 would provide examples of how the interpretative rule of construction for ''amount'' applies in certain disclosures required by Regulation Z.

Subpart B—Open-end Credit

Section 226.15—Right of Rescission

15(a) Consumer's Right To Rescind

15(a)(2)

Section 125(a) of TILA provides that, in certain credit transactions in which

the consumer's principal dwelling secures an extension of credit, the consumer may rescind the transaction for three business days after becoming obligated on the debt (and for open-end plans, after opening or increasing the credit limit on the plan). *See* 15 U.S.C. 1635(a); 12 CFR 226.15(a)(1). The rescission period may extend up to three years in certain cases. The right of rescission was created to allow consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether they want to place their home at risk by offering it as security for the credit. A consumer exercises the right to rescind by notifying the creditor of the rescission by mail, telegram, or other means of written communication. Creditors must provide consumers with a form to use in exercising the right to rescind, which must include the name and address of the creditor or agent of the creditor to receive the notice. *See* § 226.15(b). Notice is considered given when mailed, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business. *See* § 226.15(a)(2).

Comment 15(a)(2)–1 states that a creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). The comment would be revised to address situations where a creditor fails to provide the required form or designate an address for sending the notice. The proposed comment would provide that in such cases, if a consumer sends the notice to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, the consumer's notice of rescission may be effective if under the applicable state law, delivery to that person would be deemed to constitute delivery to the creditor or assignee.

15(d) Effects of Rescission

When a consumer exercises the right to rescind a mortgage transaction, the consumer is not liable for any finance charges or other charges and any security interest in the consumer's home becomes void. *See* 15 U.S.C. 1635(b); § 226.15(d)(1). After the transaction is rescinded, the creditor must tender any money or property given to anyone in connection with the transaction within a specified time frame, which triggers the consumer's duty to return any money or property that the creditor delivered to the consumer, although a court may modify these procedures. *See* § 226.15(d)(2)–(4).

Comment 15(d)(4)–1 would be revised to state expressly that a consumer's substantive right to rescind under § 226.15(a)(1) and § 226.15(d)(1) is not affected by the procedures referred to in § 226.15(d)(2) and (3), or the modification of those procedures by a court. Accordingly, where consumers seek rescission and the matter is contested by the creditor, a determination regarding consumers' right to rescind would normally be made before a court determines the amounts owed and establishes the procedures for the parties to tender any money or property. The sequence of procedures should not affect consumers' ability under TILA to establish their substantive right to rescind and to have the lien amount reduced, which may be necessary before consumers are able to establish how they will refinance or otherwise repay the loan.

Subpart C—Closed-End Credit

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed

A technical revision would be made to comment 18(c)(1)(iii)–1, to conform a citation to footnote 41 of Regulation Z. No substantive change is intended. Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions

Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Guidance about the applicability of § 226.19 to construction loans was published in comment 19(b)–1. 54 FR 9422, March 7, 1989. That guidance has been inadvertently appended to comment 19(b)(1)–1 in the Code of Federal Regulations. The two comments are restated in their correct form for reprinting in the Code of Federal Regulations. No substantive change is intended.

Section 226.23—Right of Rescission

23(a) Consumer's Right To Rescind

For the reasons discussed above, comment 23(a)(2)–1 would be revised to state the rule for effective delivery of a rescission notice when the creditor fails to provide the required form or designate an address for sending the notice (*See* supplementary information to proposed comment 15(a)(2)–1.)

Section 226.23—Right of Rescission

23(d) Effects of Rescission

For the reasons discussed above, comment 23(d)(4)–1 would be revised to expressly state that a consumer's substantive right to rescind under § 226.23(a)(1) and § 226.23(d)(1) is not affected by the procedures referred to in § 226.23(d)(2) and (3), or the modification of those procedures by a court. (*See* supplementary information to proposed comment 15(d)(4)–1.)

Subpart D—Miscellaneous

Section 226.27—Language of Disclosures

In March 2001, the Board revised § 226.27 to permit creditors to provide disclosures in languages other than English as long as disclosures in English are available to consumers who request them. 66 FR 1739, March 30, 2001. Technical revisions would be made to comment 27–1, and comment 27–2 would be deleted to conform the commentary to § 226.27, as amended. No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Rules for certain closed-end mortgage loans in § 226.32 are triggered, in part, by the amount of ''points and fees'' payable by the consumer at or before loan closing and the ''total loan amount.'' See § 226.32(a)(1)(ii). Comment 32(a)(1)(ii)–1, which was added in 1996, provides examples for calculating the ''total loan amount.'' 61 FR 14952, April 4, 1996. A technical revision would be made to comment 32(a)(1)(ii)–1, to correct a dollar amount given in one of the examples. No substantive change is intended.

Request for Information Regarding Debt Cancellation and Debt Suspension Agreements

Some lenders have replaced credit insurance products with products known as debt cancellation agreements and debt suspension agreements. Under a debt cancellation agreement or debt suspension agreement, a creditor agrees to cancel, or temporarily suspend, all or part of the borrower's repayment obligation upon the occurrence of a specified event, such as death, disability, or unemployment. The fee for a debt cancellation or debt suspension agreement can be collected monthly or in a lump sum.

At least one state has said it will regulate debt cancellation and

suspension products as insurance, other states have said they will regulate the products as bank products and not as insurance, and still others have not yet announced positions. The Office of the Comptroller of the Currency (OCC) has recently issued regulations governing sales of debt cancellation and suspension agreements by national banks. *See* 12 CFR 37.1 *et seq.*

Under the TILA and Regulation Z, debt cancellation agreements are generally subject to the same disclosure rules as credit insurance. In 1996, the Board revised Regulation Z to establish essentially identical disclosure rules for credit insurance and debt cancellation agreements. Accordingly, although debt cancellation fees satisfy the definition of a ''finance charge,'' they may be excluded from the finance charge on the same conditions as credit insurance premiums (without regard to whether debt cancellation agreements are deemed to be insurance contracts under state law). The types of debt cancellation agreements eligible for the exclusion are limited to those that provide for cancellation of or all or part of a debtor's liability (1) in case of accident or loss of life, health, or income or (2) for amounts exceeding the value of collateral securing the debt (commonly referred to as ''gap'' coverage, frequently sold in connection with motor vehicle loans). *See* § 226.4(b)(7) and (10), 4(d)(1) and (3).

Industry representatives have asked the Board to address disclosure issues under TILA and Regulation Z that may be raised by the sale of debt cancellation and debt suspension products. Anecdotal evidence suggests that the sale of those products in lieu of credit insurance has increased and that creditors are offering expanded coverage, for example to suspend repayment obligations for life-cycle events such as marriage and divorce. Some industry representatives have stated that additional guidance may be useful in clarifying the circumstances in which products offering expanded coverage qualify for the exclusions in § 226.4(d)(3) for debt cancellation fees, and in clarifying what disclosures should be provided to consumers in certain circumstances.

To consider the requests for guidance more fully, information and comment are solicited as follows:

- What are the similarities and differences among credit insurance, debt cancellation coverage, and debt suspension coverage, in the case of both closed-end and open-end credit?
- With what types of closed-end and open-end credit are debt cancellation and debt suspension products sold? Do creditors typically package multiple types of coverage (*e.g.*, disability and divorce), or sell them separately? Do creditors typically sell the products at, or after, consummation (for closed-end credit) or account opening (for open-end credit plans)?
- What disclosures are made with the sale of a product or upon conversion from one product to another, whether required by TILA or other laws? How are monthly or other periodic fees disclosed to consumers?
- Under Regulation Z, fees for credit protection programs written in connection with a credit transaction are finance charges but some fees may be excluded from the disclosed finance charge if required disclosures are made and the consumer affirmatively elects the optional coverage in writing. *See* § 226.4(b)(7) and (10), 4(d)(1) and (3). Is there a need for guidance concerning the applicability of those provisions to certain types of coverage now available? Are the required disclosures adequate for all types of products subject to § 4(d)(1) or 4(d)(3)?
- Under TILA, a credit card issuer must notify a consumer before changing the consumer's credit insurance provider. See 15 U.S.C. 1637(g); 12 CFR 226.9(f). Card issuers that intend to change credit insurance providers need only notify consumers that they may opt out of the new coverage. Should the Board interpret or amend § 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements? If so, is there a need to address conversions other than for credit card accounts?
- OCC regulations for national bank sales of debt cancellation and suspension agreements require a customer's affirmative election of the product. If the Board interprets or amends § 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements, what additional guidance would card issuers need, if any, to comply with both rules?

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1167 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov.*

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226. This collection is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The respondents and recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide creditors with a more uniform definition of providing ''clear and conspicuous'' disclosures and examples of how to satisfy the ''clear and conspicuous'' standard. The proposed revisions also would provide that the term ''amount'' represents a numerical

amount throughout Regulation Z. The proposed updates to the staff commentary also provide guidance on consumers' exercise of rescission for certain home-secured loans. While the proposal would amend Regulation Z and the staff commentary, it is expected that these revisions would not increase the paperwork burden of creditors. With respect to state member banks, there are 1,312 respondents and recordkeepers. Current annual burden is estimated to be 618,398 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 would continue to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.2 is amended by adding a new paragraph (a)(27) and adding a new paragraph (b)(5) to read as follows:

Subpart A—General

* * * * *

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this regulation, the following definitions apply:

* * * * *

(27) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

* * * * *

(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

* * * * *

(5) Where the word ''amount'' is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

3. In Supplement I to Part 226:

a. Under *Section 226.2 Definitions and Rules of Construction,* under *2(a) Definitions,* a new paragraph title *2(a)(27) Clear and conspicuous* is added, and new paragraphs (27) 1. through (27) 4. are added; and under *2(b) Rules of Construction,* a new paragraph (b)2. is added.

b. Under *Section 226.5 General Disclosure Requirements,* under *Paragraph 5(a)(1),* paragraph 1. is revised.

c. Under *Section 226.5a Credit and Charge Card Applications and Solicitations,* under *Paragraph 5a(a)(2),* paragraph 1. is revised.

d. Under *Section 226.15 Right of Rescission,* under Paragraph 15(a)(2), *paragraph 1.* is revised, and under *Paragraph 15(d)(4),* paragraph 1. is revised.

e. Under *Section 226.16 Advertising,* paragraph 1. is revised.

f. Under *Section 226.18 Content of Disclosures,* under *Paragraph 18(c)(1)(iii),* paragraph 1. is revised.

g. Under *Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions,* under *19(b) Certain variable-rate transactions,* paragraph 1. is revised, and under *Paragraph 19(b)(1),* paragraph 1. is revised.

h. Under *Section 226.23 Right of Rescission,* under *Paragraph 23(a)(2),* paragraph 1. is revised, and under *Paragraph 23(d)(4),* paragraph 1. is revised.

i. Under *Section 226.24 Advertising,* paragraph 1. is revised.

j. Under *Section 226.27,* the section title is revised, paragraph 1. is revised, and paragraph 2. is removed and reserved.

k. Under *Section 226.32 Requirements for Certain Closed-End Home Mortgages,* under *Paragraph 32(a)(1)(ii),* paragraph 1.ii. is revised.

l. Under *Appendix K—Total Annual Loan Cost Rate Computations for Reverse Mortgage Transaction,* under *(d) Reverse mortgage model form and sample form,* under *(d)(2),* paragraph 1. would be revised.

Supplement I To Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(27) Clear and conspicuous.

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the ''clear and conspicuous'' standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the ''clear and conspicuous'' standard is met.

4. *Use of codes or symbols.* The ''clear and conspicuous'' standard does not prohibit using codes or symbols such as *APR* (for annual percentage rate), *FC* (for finance charge), or *Cr* (for credit balance), so long as

a legend or description of the code or symbol is provided on the disclosure statement.

* * * * *

2(b) Rules of Construction

* * * * *

2. *Amount.* A creditor would state a dollar amount when disclosing the amount financed, finance charge, or the amount of any payment for a closed-end transaction (Subpart C). A creditor might explain how the amount of any finance charge will be determined by stating a percentage (for example, where the fee is a percentage of each cash advance) or a dollar amount (for example, a minimum finance charge of $1.00) in disclosures provided before the first transaction under an open-end plan (Subpart B).

* * * * *

Subpart B—Open-End Credit

* * * * *

Section 226.5—General Disclosure Requirements

5(a) Form of Disclosures

Paragraph 5(a)(1).

1. *Clear and conspicuous.* See § 226.2(a)(27) and accompanying comments. [The ''clear and conspicuous'' standard requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. (But see comments 5a(a)(2)–1 and –2 for special rules concerning section 226.5a disclosures for credit card applications and solicitations.) The standard does not prohibit:

- Pluralizing required terminology (*finance charge* and *annual percentage rate*).
- Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.
- Sending promotional material with the required disclosures.
- Using commonly accepted or readily understandable abbreviations (such as *mo.* for *month* or *Tx.* for *Texas*) in making any required disclosures.
- Using codes or symbols such as *APR* (for annual percentage rate), *FC* (for finance charge), or *Cr* (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.]

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General Rules

5a(a)(2) Form of Disclosures

1. *Clear and conspicuous standard.* See § 226.2(a)(27) and accompanying comments. [For purposes of § 226.5a disclosures, ''clear and conspicuous'' means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures in 12-point type are deemed to be readily noticeable for purposes of section 226.5a. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear-and-conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different form.]

* * * * *

Section 226.15—Right of Rescission

15(a) Consumer's Right to Rescind

* * * * *

Paragraph 15(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.15(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission and the consumer sends the notification to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, state law determines whether delivery to that person constitutes delivery to the creditor or assignee.

* * * * *

15(d) Effects of Rescission

* * * * *

Paragraph 15(d)(4).

1. *Modifications.* The procedures outlined in § 226.15(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The consumer s substantive right to rescind under § 226.15(a)(1) and § 226.15(d)(1) is not affected by the procedures referred to in § 226.15(d)(2) and (3), or the modification of those procedures by a court.

* * * * *

Section 226.16—Advertising

1. *Clear and conspicuous standard.* See § 226.2(a)(27) and accompanying comments. [Section 226.16 is subject to the general ''clear and conspicuous'' standard for subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.]

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.18—Content of Disclosures

* * * * *

18(c) Itemization of Amount Financed

* * * * *

Paragraph 18(c)(1)(iii).

1. *Amounts paid to others.* This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled ''insurance'' or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in footnote [40] 41, third parties must be identified by name.

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain Variable-Rate Transactions

1. *Coverage.* Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer's principal dwelling, but also to any other closed-end variable-rate transaction secured by the principal dwelling. Closed-end variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b). (Furthermore, ''shared-equity'' or ''shared-appreciation'' mortgages are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to § 226.17(c)(5). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).

* * * * *

Paragraph 19(b)(1).

1. *Substitute.* Creditors who wish to use publications other than the *Consumer Handbook on Adjustable Rate Mortgages* must make a good faith determination that their brochures are suitable substitutes to the

Consumer Handbook. A substitute is suitable if it is, at a minimum, comparable to the *Consumer Handbook* in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the *Consumer Handbook*. [In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).]

* * * * *

Section 226.23—Right of Rescission

23(a) Consumer's Right To Rescind

* * * * *

Paragraph 23(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.23(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.23(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.23(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission and the consumer sends the notification to someone other than the creditor or assignee, such as a third-party loan servicer acting as the creditor's agent, state law determines whether delivery to that person constitutes delivery to the creditor or assignee.

* * * * *

23(d) Effects of Rescission.

* * * * *

Paragraph 23(d)(4).

1. *Modifications.* The procedures outlined in § 226.23(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The consumer's substantive right to rescind under § 226.23(a)(1) and § 226.23(d)(1) is not affected by the procedures referred to in § 226.23(d)(2) and (3), or the modification of those procedures by a court.

* * * * *

Section 226.24—Advertising

1. *Clear and conspicuous standard.* See § 226.2(a)(27) and accompanying comments. On a merchandise tag that is an advertisement under the regulation, a creditor is not prohibited under the ''clear and conspicuous'' standard from including the necessary credit terms on both sides of the tag, so long as each side is accessible. [This section is subject to the general ''clear and conspicuous'' standard for this subpart but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.]

* * * * *

Subpart D—Miscellaneous

* * * * *

Section 226.27—[Spanish] Language of Disclosures

1. *Subsequent disclosures.* If a creditor [in Puerto Rico] provides initial disclosures in [Spanish] a language other than English, subsequent disclosures need not be in [Spanish] that other language. For example, if the creditor gave Spanish-language initial disclosures, periodic statements and change-in-terms notices may be made in English.

2. [Removed and reserved.]

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

* * * * *

Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the ''points and fees'' test, the total loan amount is calculated by taking the amount financed, as determined according to section 226.18(b), and deducting any cost listed in section 226.32(b)(1)(iii) and section 226.32(b)(1)(iv) that is both included as points and fees under section 226.32(b)(1) and financed by the creditor. Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points. A $500 premium for optional credit life insurance is used in one example.

* * * * *

ii. If the consumer pays the $300 fee for the creditor-conducted appraisal in cash at closing, the $300 is included in the points and fees calculation because it is paid to the creditor. However, because the $300 is not financed by the creditor, the fee is not part of the amount financed under section 226.18(b) [($10,000, in this case)]. In this case, the amount financed is the same as the total loan amount [is] $9,600 ($10,000, less $400 in prepaid finance charges).

* * * * *

Appendix K—Total-Annual-Loan-Cost Rate Computations for Reverse-Mortgage Transactions

* * * * *

(d) Reverse-Mortgage Model Form and Sample Form

* * * * *

(d)(2) Sample Form

1. *General.* [The ''clear and conspicuous'' standard for reverse-mortgage disclosures does not require disclosures to be printed in any particular type size.] The ''clear and conspicuous'' standard applies to disclosures required by § 226.33. Disclosures may be made on more than one page, and use both the front and the reverse sides, as long as the pages constitute an integrated document and the table disclosing the total annual loan-cost rates is on a single page.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29945 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1171]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation DD, which implements the Truth in Savings Act, and the staff commentary to the regulation. Regulation DD would be revised to define more specifically the standard for providing ''clear and conspicuous'' disclosures, and to provide a more uniform standard among the Board's regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, M, and Z appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R–1171 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board

of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at (202) 452–3819 or 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy and Elizabeth A. Eurgubian, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.,* is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield (APY), the interest rate, and other account terms. The act and regulation require depository institutions to provide a consumer with disclosures upon request and before an account is opened. Institutions are not required to provide periodic statements; but if they do, the act and regulation require that fees, yields, and other information be provided on the statements. Notice must be given to accountholders before an adverse change in account terms occurs and prior to the renewal of certificates of deposit (time accounts). The TISA is implemented by the Board's Regulation DD (12 CFR part 230). An official staff commentary interprets the requirements of Regulation DD (12 CFR part 230 (Supp. I)).

II. Proposed Revisions

Section 230.2—Definitions

2(w) Clear and Conspicuous

Section 264(e) of TISA requires disclosures to be made in clear and plain language and presented in a format designed to allow consumers to readily understand the terms of the accounts offered. *See* 12 U.S.C. 4303(e). This standard is implemented in Regulation DD. *See* §§ 230.3(a) and 230.8(c). Guidance on how depository institutions may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comment 3(a)–1. The commentary states that under this standard, disclosures must be in a readily understandable form.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be ''clear and conspicuous'' under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and ''clear and readily understandable'' under Regulation E (Electronic Fund Transfers). In interpreting the ''clear and conspicuous'' standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be ''in a reasonably understandable'' form; similarly, under Regulation DD disclosures must be in a format that allows consumers ''to readily understand the terms of their account.'' For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be ''readily noticeable to the consumer.'' In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the ''clear and conspicuous'' standard to mean that a disclosure is ''reasonably understandable and designed to call attention to the nature and significance of the information'' in the disclosure. 12 CFR 216.3(b)(1). Regulation P also provides examples of how to satisfy the standard. 12 CFR 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation DD by adding a definition of clear and conspicuous in § 230.2(w), consistent with the ''clear and conspicuous'' definition in Regulation P. The staff commentary to Regulation DD also would be revised to add comments 2(w)–1 and –2, consistent with Regulation P's examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, M and Z appear elsewhere in today's **Federal Register**. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Additional information may accompany disclosures required under Regulation DD. *See* § 230.3(a), comment 6(a)–4. Proposed comment 2(w)–3 further clarifies that the ''clear and conspicuous'' standard generally does not prohibit adding other terms to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(w)–3 would clarify, however, that the presence of other information may be a factor in determining whether the ''clear and conspicuous'' standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the ''clear and conspicuous'' standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). *See* proposed comment 2(w)–2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement.

The Board also proposes to delete as unnecessary the guidance in comment 3(a)–1 and replace it with a cross-reference to § 230.2(w) and accompanying comments. Guidance regarding the ''clear and conspicuous'' standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1171 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov.*

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation DD. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be prepared and will consider comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0271.

The collection of information that is revised by this rulemaking is found in 12 CFR part 230. This collection is mandatory (15 U.S.C. 4301 *et seq.*) to evidence compliance with the requirements of Regulation DD and the Truth in Savings Act (TISA). The respondents and recordkeepers are for-profit depository institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide depository institutions with a more uniform definition for ''clear and conspicuous'' disclosures and provide examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation DD and the staff commentary, it is expected that these revisions would not increase the paperwork burden of depository institutions. With respect to state member banks, it is estimated that there are 976 respondents and recordkeepers. Current annual burden is estimated to be 146,644 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer Protection, Federal Reserve System, Reporting and record keeping requirements, Truth in Savings.

For the reasons set forth in the preamble, the Board proposes to amend Regulation DD, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Section 230.2 is amended by adding a new paragraph (w) to read as follows:

§ 230.2 Definitions.

For the purposes of this regulation the following definitions apply:

* * * * *

(w) *Clear and conspicuous* means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure.

3. In Supplement I to Part 230:

a. Under Section 230.2 Definitions, a new paragraph title *(w) Clear and conspicuous* is added, and new paragraphs (w) 1. through (w) 3. are added.

b. Under Section 230.3 General disclosure requirements, under *(a) Form,* paragraph 1. is revised.

Supplement I to Part 230—Official Staff Interpretations

* * * * *

Section 230.2 Definitions

* * * * *

(w) Clear and conspicuous

1. *Reasonably understandable.* Examples of disclosures that are reasonably understandable include disclosures that:

i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;

ii. Use short explanatory sentences or bullet lists whenever possible;

iii. Use definite, concrete, everyday words and active voice whenever possible;

iv. Avoid multiple negatives;

v. Avoid legal and highly technical business terminology whenever possible; and

vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. *Designed to call attention.* Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

i. Use a plain-language heading to call attention to the disclosure;

ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;

iii. Provide wide margins and ample line spacing;

iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. *Other information.* Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.

Section 230.3 General disclosure requirements

(a) *Form*

1. *Clear and conspicuous.* See § 230.2(w) and accompanying comments. [*Design Requirements.* Disclosures must be presented in a format that allows consumers to readily understand the terms of their account. Institutions are not required to use a particular type size or typeface, nor are institutions required to state any term more conspicuously than any other term. Disclosures may be made:

i. In any order

ii. In combination with other disclosures or account terms

iii. In combination with disclosures for other types of accounts, as long as it is clear to consumers which disclosures apply to their account

iv. On more than one page and on the front and reverse sides

v. By using inserts to a document or filling in blanks

vi. On more than one document, as long as the documents are provided at the same time.]

* * * * *

By order of the Board of Governors of the Federal Reserve System

Dated: November 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29946 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–35–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines. This proposed AD would require initial and repetitive gap inspections of the bypass valve cover, on certain part number (P/N) mechanical fuel controls (MFCs), and replacement of those MFCs as mandatory terminating action to the repetitive inspections. This proposed AD is prompted by sixteen reports of loss of engine throttle response and overspeed, eight of which resulted in in-flight shutdown. We are proposing this AD to prevent loss of throttle response and overspeed, resulting in engine in-flight shutdown.

DATES: We must receive any comments on this proposed AD by February 9, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–35–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Honeywell Engines & Systems, Technical Publications Department, 111 South 34th Street, Phoenix, Arizona 85034; telephone (602) 365–5535; fax (602) 365–5577.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–35–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on PWC models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines. Transport Canada advises that sixteen reports of loss of engine throttle response and overspeed have been received, eight of which resulted in in-flight shutdown. Investigation by the manufacturer revealed that the cause of this problem is dislodgement of the outer lip of the mechanical fuel control bypass valve diaphragm. The dislodgement is caused by inadequate preload applied to the bypass valve diaphragm outer lip during the assembly of the MFC.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell Service Information Bulletin (SIB) No. 82, dated September 14, 2001, that describes procedures for detecting dislodgement of the outer lip of the MFC bypass valve diaphragm, by performing gap inspections of the bypass valve cover on affected MFCs.

Differences Between This Proposed AD and the Manufacturer's Service Information

Although Honeywell SIB No. 82, dated September 14, 2001, suggests the gap inspections be done periodically at the aircraft ''A'' check, this proposal requires initial gap inspections within 500 hours time-in-service (TIS) after the effective date of the proposed AD, and repetitive gap inspections at intervals of 1,500 hours TIS. This proposal also requires replacement of the MFC with an MFC that has an improved design bypass valve diaphragm.

FAA's Determination and Requirements of the Proposed AD

These PWC models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines, manufactured in Canada, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement,

Transport Canada has kept us informed of the situation described above. We have examined Transport Canada's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require:

- Initial gap inspection of the bypass valve cover on affected MFCs, within 500 hours time-in-service (TIS) after the effective date of the proposed AD.
- Repetitive gap inspections of the bypass valve cover on affected MFCs, at intervals of 1,500 hours TIS.
- Replacement of the affected MFC with an MFC that has an improved design bypass valve diaphragm, within 4,500 hours-in-service or 24 months from the effective date of this AD, whichever occurs first, as mandatory terminating action to the repetitive inspections of the proposed AD.

The proposed AD would require you to use the service information described previously to perform the inspections.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are approximately 2,800 PWC models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines of the affected design in the worldwide fleet. We estimate that 473 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 0.1 work hour per engine to perform the proposed inspection, about 1 work hour per engine to replace the MFC during maintenance, and that the average labor rate is $65 per work hour. Required parts would cost approximately $72,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $34,089,819. The manufacturer has stated that it may provide the new design MFCs at no cost to operators, and that if the MFC is replaced at shop visit, no additional labor costs will be incurred.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–35–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Pratt & Whitney Canada: Docket No. 2003–NE–35–AD.

Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by February 9, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada (PWC) models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines, with mechanical fuel controls (MFCs), part numbers (P/Ns) 3244841–21, 3244853–17, 3244855–15, 3244857–14, 3244858–23, 3244871–5, 3244873–4, and 3244874–4, installed. These engines are installed on, but not limited to, Aerospatiale ATR 42 and ATR 72, BAE Systems (Operations) Limited ATP, Bombardier Inc. DHC–8–200 series, DHC–8–300 series, CL–215T, and CL–415, Construcciones Aeronauticas, S.A. (CASA) C–295, Fokker Aircraft B.V. F27 Mark 050, and Mark 060 airplanes.

Unsafe Condition

(d) This AD is prompted by sixteen reports of loss of engine throttle response and overspeed, eight of which resulted in in-flight shutdown. We are issuing this AD to prevent loss of throttle response and overspeed, resulting in engine in-flight shutdown.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Gap Inspection

(f) Within 500 hours time-in-service (TIS) after the effective date of the AD, perform a gap inspection between the MFC bypass valve cover and the MFC main body, and disposition the MFC. Follow paragraphs 5.0 through 5.3 of Honeywell Service Information Bulletin (SIB) No. 82, dated September 14, 2001, to do the inspection and MFC disposition.

Repetitive Gap Inspections

(g) At intervals of 1,500 hours TIS from the last gap inspection, perform repetitive gap inspections between the MFC bypass valve cover and the MFC main body and disposition the MFC. Follow paragraphs 5.0 through 5.3 of Honeywell SIB No. 82, dated September 14, 2001, to do the inspection and MFC disposition.

Mandatory Terminating Action

(h) Within 4,500 hours TIS or 24 months from the effective date of this AD, whichever occurs first, replace the MFC with an MFC not having a P/N listed in paragraph (c) of this AD.

(i) Replacement of the MFC with an MFC whose P/N is not listed in paragraph (c) of this AD constitutes mandatory terminating action to the repetitive inspection requirements specified in paragraph (g) of this AD. Information on new design replacement MFCs can be found in PWC Service Bulletin No. PW100–72–21562, Revision 2, dated December 7, 2000.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(k) You must use Honeywell Service Information Bulletin No. 82, dated September 14, 2001, to perform the inspections required

by this AD. Approval of incorporation by reference from the Office of the Federal Register is pending.

Related Information

(l) Transport Canada airworthiness directive CF–2002–34, dated July 15, 2002, and Pratt & Whitney Service Bulletin No. PW100–72–21669, dated October 2, 2001, also address the subject of this AD.

Issued in Burlington, Massachusetts, on December 4, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–30587 Filed 12–9–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1917 and 1918

[Docket No. S–025A]

RIN 1218–AA56

Longshoring and Marine Terminals; Vertical Tandem Lifts

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Extension of comment period.

SUMMARY: The Department of Labor is extending the comment and hearing request period for its proposed standard titled Longshoring and Marine Terminals; Vertical Tandem Lifts, for an additional sixty (60) days until February 13, 2004.

DATES: *Written Comments:* Comments and hearing requests must be submitted by the following dates.

Hard Copy: You must submit your comments and hearing requests (postmarked or sent) by February 13, 2004.

Facsimile and electronic transmission: You must submit your comments and hearing requests by February 13, 2004. (Please *see* the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

ADDRESSES: You may submit comments and hearing requests, identified by docket number S–025A and/or RIN number 1218–AA56, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web Site: Follow the instructions for submitting comments, hearing requests, or electronic documents through the OSHA Internet Home page at *http://ecomments,.osha.gov.*
- Fax: If your submissions, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. S–025AS, in your comments or hearing request.
- Mail: Submit three copies of your comments or hearing requests to the OSHA Docket Office, Docket No. S–025A, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Because of security-related problems, there may be a significant delay in the receipt of submissions by regular mail.
- Hand Delivery/Courier: Submit three copies of your comments or hearing requests to the OSHA Docket Office, Docket No. S–025A, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t. Please contact the OSHA Docket Office at (202) 693–2350 (OSHA's TTY number is (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service.

Instructions: All submissions received must include the agency name and the docket number S–025A or Regulatory Information Number (RIN) 1218–AA56 for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to OSHA's Web page at *http://www.osha.gov* or the OSHA Docket Office at the address above. Contact the OSHA Docket Office at (202) 693–2350 (OSHA's TTY number is (877) 889–5627 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Paul Rossi, OSHA, Office of Maritime, Directorate of Standards and Guidance, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2086. For general information and press inquiries, contact OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For additional copies of this **Federal Register** notice, contact OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

OSHA announced publication of its proposed standard for Longshoring and Marine Terminals; Vertical Tandem Lifts, in the **Federal Register** on September 16, 2003 (68 FR 54297). In that notice, the Agency provided the public with ninety (90) days to submit written comments, with a final date of December 15, 2003. Several interested persons have an extension of the deadline for submitting comments based on the need for additional time to gather information and to provide a thorough review and response to the proposed standard. In light of the interest expressed by the public, OSHA is providing an additional sixty (60) days for the submission of comments and hearing requests. Accordingly, written comments and hearing requests must now be submitted by February 13, 2004.

II. Obtaining Copies of the Proposed Standard

You can download the proposed standard for Vertical Tandem Lifts from OSHA's Web page at *http://www.osha.gov.* A printed copy of the proposed standard is available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the proposed standard to (202) 693–2498.

III. Submission of Comments and Internet Access to Comments

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic submission, you must submit three copies of the materials to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date,

subject, and docket number so we can attach them to your comments. Because of security-related procedures the use of regular mail may cause a significant delay in the receipt of comments. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted on OSHA's Web page at *http://www.osha./gov.* OSHA cautions you about submitting personal information such as social security numbers, date of birth, etc. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the OSHA Web page and for assistance in using the Internet to locate docket submissions.

Authority and Signature

The notice was prepared under the direction of John L. Henshaw, Assistant Security for Occupational Safety and Health. It is issued under sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary's Order 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC, this 4th day of December 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–30576 Filed 12–9–03; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7598–2]

EPA Responses to State and Tribal 8-Hour Ozone Air Quality Designation Recommendations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the EPA has posted its responses to States' and Tribes' 8-hour ozone air quality designation recommendations on the web. If a State or Tribe wishes to submit additional information to EPA regarding the designations, we have requested that they submit that information no later than February 6, 2004.

ADDRESSES: The EPA's responses are available for public inspection at EPA's Web site at: *http://www.epa.gov/ozonedesignations* and at the Office of Air and Radiation (OAR) Docket Center, Docket Number OAR 2003–0083, respectively. State and Tribal recommendations are also available at the same EPA website and docket locations.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Reinders, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5284 or by e-mail at: *reinders.sharon@epa.gov* or Ms. Annie Nikbakht, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5246 or by e-mail at: *nikbakht.annie@epa.gov.* Mr. Barry Gilbert can be contacted for air quality technical issues: Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5238 or by email at: *gibert.barry@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID Number OAR 2003–0083. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OAR Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OAR Docket is (202) 566–1742.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstrl.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in A.1.

List of Subjects

Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Authority: 42 U.S.C. 7408, 42 U.S.C. 7410, 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: December 4, 2003.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–30582 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NV108–SWIb; FRL–7595–6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Commercial/Industrial Solid Waste Incinerator Units; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a negative declaration submitted by the Nevada Division of Environmental Protection. The negative declaration certifies that commercial/industrial solid waste incinerator units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the agency's air pollution control jurisdiction.

DATES: Comments must be received in writing by January 9, 2004.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses a Clean Air Act section 111(d)/129 negative declaration submitted by the Nevada Division of Environmental Protection certifying that commercial/industrial solid waste incinerator units do not exist within its air pollution control jurisdiction. This negative declaration was submitted on October 16, 2003. For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. If no adverse comments are received in response to this action, no further activity will be contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

Dated: November 19, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–30591 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0265; FRL–7330–8]

Bitertanol, Chlorpropham, Cloprop, Combustion Product Gas, Cyanazine, et al.; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke certain tolerances and tolerance exemptions for residues of the fungicide and insecticide dinocap; insecticides combustion product gas, ethion, formetanate hydrochloride, nicotine-containing compounds, polyoxyethylene, and tartar emetic; herbicides chlorpropham, cyanazine, and tridiphane; fungicides bitertanol, 1,1,1-trichloroethane, and triforine; and the plant regulators cloprop and 4,6-dinitro-o-cresol because these specific tolerances are either no longer needed or are associated with food uses that are no longer current or registered in the United States. Also, EPA is proposing to modify certain ethion tolerances before they expire. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the proposed revocation of 61 tolerances and tolerance exemptions. Because three tolerances were previously reassessed, 58 tolerances/exemptions would be counted as reassessed toward the August, 2006 review deadline.

DATES: Comments, identified by docket ID number OPP–2003–0265, must be received on or before February 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address:*nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAI CS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0265. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will

not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0265. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0265. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0265.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0265. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance or tolerance exemption proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance/exemption immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke certain tolerances and tolerance exemptions for residues of the fungicide and insecticide dinocap; insecticides combustion product gas, ethion, formetanate hydrochloride, nicotine-containing compounds, polyoxyethylene, and tartar emetic; herbicides chlorpropham, cyanazine, and tridiphane; fungicides bitertanol, 1,1,1-trichloroethane, and triforine; and the plant regulators cloprop and 4,6-dinitro-o-cresol because these specific tolerances and exemptions correspond to uses no longer current or registered under FIFRA in the United States. It is EPA's general practice to propose revocation of those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

Concerning the Reregistration Eligibility Decisions (REDs) for chlorpropham and ethion and the Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for chlorpropham mentioned in this rule, printed copies of the REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000; internet at *http://www.ntis.gov/*. Electronic copies of REDs and TREDs are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

1. *Bitertanol*. EPA is proposing to revoke the tolerance in 40 CFR 180.457 for residues of beta-([1,1'-biphenyl]-4-yloxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, also called bitertanol, in or on banana (whole) because no active U.S. registrations have existed for its associated commodity use since 1992 and the tolerance is no longer needed.

2. *Chlorpropham*. In the 1996 RED for chlorpropham, EPA required environmental fate and ecological effects data to maintain the spinach registration, which was registered as a Special Local Need under FIFRA 24(c) and was not being supported by the primary registrants of technical chlorpropham. In February 2002, EPA canceled the last Special Local Need registration, but allowed use until December 31, 2002. On July 19, 2002, EPA reassessed the spinach tolerance in a TRED for chlorpropham. That reassessment decision was a recommendation to revoke the spinach tolerance because there are no active registrations and the tolerance is no longer needed. The Agency believes that there has been sufficient time for chlorpropham-treated spinach to clear the channels of trade. Therefore, EPA is proposing to revoke the interim tolerance in 40 CFR 180.319 regarding isopropyl m-chlorocarbanilate (CIPC), called chlorpropham, for residues in or on spinach.

3. *Cloprop*. On January 21, 1998 (63 FR 3057)(FRL–5743–8), EPA published a Notice of Proposed Rulemaking in the **Federal Register** in which the Agency proposed to revoke all cloprop tolerances. On January 26, 1998, the Pineapple Growers Association of Hawaii commented and requested that the pineapple tolerance for cloprop not be revoked for 5 years. On October 26, 1998 (63 FR 57062)(FRL–6035–8), EPA published a final rule in the **Federal Register** in which the Agency responded and stated that it would not revoke the cloprop tolerance on pineapple at that time. On September 21, 2001, EPA amended its authorization of a specific emergency exemption under Section 18 of FIFRA for application of cloprop on pineapple in Hawaii (which was to expire on August 3, 2001) until August 2, 2002. The Agency believes that there has been sufficient time for cloprop-treated pineapple to clear the channels of trade. Therefore, EPA is now proposing to revoke the tolerance in 40 CFR 180.325 for residues of 2-(m-chlorophenoxy) propionic acid, called cloprop, from application of the acid or of 2-(m-chlorophenoxy) propionamide in or on pineapple because no active registration exists and the tolerance is no longer needed.

4. *Combustion product gas*. EPA is proposing to revoke the tolerance exemption in 40 CFR 180.1051 for residues of the gas produced by the controlled combustion in air of butane, propane, or natural gas in or on all food commodities (except fresh meat) when used after harvest in modified atmospheres for stored product with prescribed conditions. The Agency is proposing this revocation because no active U.S. registrations have existed since 1993.

5. *Cyanazine*. In November 1994, EPA initiated a Special Review of cyanazine based on concerns that cyanazine may pose a risk of inducing cancer in humans from dietary, occupational, and residential exposure. In the **Federal Register** of July 25, 1996 (61 FR 39023) (FRL–5385–7), EPA announced a final determination to terminate the cyanazine Special Review. In the same notice, EPA accepted requests for the voluntary cancellation of cyanazine

registrations effective December 31, 1999 and ordered the cancellations to take effect on January 1, 2000, authorized sale and distribution of such products in the channels of trade in accordance with their labels through September 30, 2002, and prohibited the use of cyanazine products after December 31, 2002. EPA issued an order confirming the cyanazine cancellation on January 6, 2000 (65 FR 771) (FRL–6486–7).

EPA proposed to revoke the tolerances for cyanazine on April 23, 1999 (64 FR 19961) (FRL–6076–4). Only one significant comment was received in response to that document. Griffin L.L.C. requested that EPA not revoke the tolerances for cyanazine and due to Griffin's interest in maintaining those tolerances as import tolerances, the Agency did not take action on cyanazine at that time (64 FR 39078, July 21, 1999) (FRL–6093–9). However, in a letter to the Agency dated August 24, 1999, Griffin L.L.C. stated that it no longer needs EPA to maintain import tolerances for cyanazine. The Agency believes that there has been sufficient time for cyanazine-treated commodities to clear the channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.307 for residues of the herbicide 2-[[4-Chloro-6-(ethylamino)-s-triazin-2-yl]amino]-2-methylpropionitrile, called cyanazine, in or on corn, forage; corn, fresh, kernal plus cob with husks removed; corn, grain; corn, stover; cotton, undelinted seed; sorghum, forage; sorghum, grain; sorghum, grain, stover; wheat, forage; wheat, grain; and wheat, straw.

6. *4,6-Dinitro-o-cresol*. EPA is proposing to revoke the tolerance in 40 CFR 180.344 for residues of 4,6-dinitro-o-cresol (DNOC) and its sodium salt in or on apple from application to apple trees at the blossom stage because no active U.S. registrations have existed for its associated commodity use since 1993.

7. *Dinocap*. On April 26, 2002 (67 FR 20767)(FRL–6833–8), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active dinocap product registrations. EPA approved the registrants' requests for voluntary cancellation and issued cancellation orders with an effective date of October 24, 2002 which allowed the registrants to sell and distribute existing stocks of the canceled products until February 14, 2003. The Agency believes that there is sufficient time for end users to exhaust those existing stocks and treated commodities to clear the channels of trade by February 14, 2004. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.341 for combined residues that is a mixture of 2,4-dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate, called dinocap, in or on apple and grape with a expiration/revocation date of February 14, 2004.

8. *Ethion*. On July 31, 2002 (67 FR 49606)(FRL–7191–4), EPA published a final rule in the **Federal Register** which revoked ethion tolerances on citrus fruit; dried citrus pulp, and certain animal commodities with expiration/revocation dates of October 1, 2008. The Agency acknowledged that citrus and animal feed (citrus, dried pulp) with legal residues of ethion can take several years to clear channels of trade from ethion's last legal use date of December 31, 2004.

In the July 2002 final rule, EPA did not act on the cattle and milk fat tolerances for ethion because of an existing cattle ear tag product. On October 16, 2002 (67 FR 63909)(FRL–7276–6), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last cattle ear tag product for ethion. EPA approved the registrant's request for voluntary cancellation and on June 4, 2003 issued a cancellation order with an effective date of May 31, 2003, i.e., the order allowed the basic registrant to distribute and sell existing stocks of the canceled product until May 31, 2003. Therefore, EPA is now proposing to revoke tolerances in 40 CFR 180.173 for residues of the insecticide ethion (*O,O,O′,O′*-tetraethyl *S,S′*-methylene bisphosphorodithioate) including its oxygen analog (*S*-[[(diethoxyphos phinothioyl) thio]methyl] *O,O*-diethyl phosphorothioate) in or on cattle, fat; cattle, meat byproducts; cattle, meat (fat basis); and milk fat (reflecting (n) residues in milk), each with an expiration/revocation date of October 1, 2008. These proposed dates are consistent with the expiration/revocation date concerning the ethion tolerance on dried citrus pulp, an animal feed. In addition and in accordance with the 2001 RED for ethion, EPA is proposing not only to revoke the cattle tolerances, but also to decrease them based on an available ruminant feeding study to 0.2 ppm during the period before they expire on October 1, 2008. In the RED, EPA found that these revised tolerances are safe in accordance with section 408 of the FFDCA. (A copy of the ethion RED will be made available in the docket for this proposed rule. See the ethion RED Part IV(C)(1)(b): Tolerance Summary).

Also, in the 2001 RED for ethion, EPA recommended that the citrus tolerances should be revoked, but also be raised during the period before they expire (from 10.0 to 25.0 ppm for dehydrated pulp and from 2.0 to 5.0 ppm for citrus fruits) based on the available citrus field trial and processing data. In the RED, EPA found that these revised tolerances are safe in accordance with section 408 of the FFDCA. (See the ethion RED Part IV(C)(1)(b): Tolerance Summary). Therefore, in 40 CFR 180.173, while the citrus, dried pulp and fruit, citrus tolerances will continue to expire on October 1, 2008, the Agency is proposing to increase the tolerances for citrus, dried pulp (10 ppm) and fruit, citrus (2.0 ppm) during the period before they expire to 25.0 and 5.0 ppm, respectively.

In addition, to conform to current Agency practice, EPA is proposing in 40 CFR 180.173 to revise the commodity terminologies for ''fruit, citrus'' to ''fruit, citrus, group 10;'' and ''milk fat (reflecting (N) residues in milk)'' to ''milk, fat, reflecting negligible residues in milk.''

9. *Formetanate hydrochloride*. EPA had initiated negotiations with the registrant for formetanate hydrochloride due to Agency concerns. As one measure to reduce concerns, the registrant agreed to delete the product use on plums and prunes, which appear to benefit little from use of the product. Pursuant to section 6(f) of FIFRA, EPA received the request for voluntary amendments to delete the aforementioned uses from the registrations. On February 8, 2000, a 6(f)(1) notice of receipt of the request by the registrant was published in the **Federal Register** (65 FR 6208) (FRL–6489–6). EPA granted the registrant's request to waive the 180–day comment period, but the Agency provided a 30–day public comment period, and granted the requested amendments to delete those uses from registration labels on May 31, 2000. Except for the purpose of relabeling, the Agency had prohibited sale and distribution by the registrant after December 1, 1999 and by persons other than the registrant, including existing stocks, after June 1, 2000, of products labeled for use on plums and prunes.

Because there are no active registrations for use of formetanate hydrochloride on plums and prunes, the tolerances are no longer needed. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.276(a)(1) for residues of the insecticide formetanate hydrochloride in or on plum, prune, fresh and in 40 CFR 180.276(a)(2) for residues of the

insecticide formetanate hydrochloride in or on dried prunes.

10. *Nicotine-containing compounds*. On December 6, 2002 (67 FR 72673)(FRL–7281–5), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant to amend a registration for a product whose active ingredient is a nicotine-containing compound and delete greenhouse food crop uses, including cucumber, lettuce, and tomato. (These were the last active food use registrations for nicotine-containing compounds). EPA approved the registrants' requests for voluntary deletion of these uses and allowed a period of 18 months for the registrant to sell and distribute existing stocks until December 4, 2004. The Agency believes that there is sufficient time for end users to exhaust those existing stocks and treated commodities to clear the channels of trade by December 4, 2005. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.167 for residues of nicotine-containing compounds in or on cucumber, lettuce, and tomato with expiration/revocation dates of December 4, 2005.

11. *Polyoxyethylene*. EPA is proposing to revoke the tolerance exemptions in 40 CFR 180.1078 for residues of poly(oxy-1,2-ethanediyl), alpha-isooctadyl-omega-hydroxy, also called polyoxyethylene, in or on fish, shellfish, irrigated crops, meat, milk, poultry, and eggs because no active U.S. registrations have existed since 1990.

12. *Tartar emetic*. EPA is proposing to revoke the tolerances in 40 CFR 180.179 for residues, calculated as combined antimony trioxide, in or on fruit, citrus; grape, and onion because no active U.S. registrations have existed for their associated commodity uses since 1992.

13. *1,1,1-Trichloroethane*. EPA is proposing to revoke the tolerance exemption in 40 CFR 180.1012 for residues of 1,1,1-trichloroethane when used in the postharvest fumigation of citrus fruits because no active U.S. registrations have existed since 1989.

14. *Tridiphane*. On September 26, 2001 (66 FR 49184)(FRL–6802–1), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant for cancellation of the last active tridiphane product registration. EPA approved the registrants' request for voluntary cancellation and issued a cancellation order with an effective date of April 5, 2002 which allowed the registrant to sell and distribute existing stocks of the canceled product until July 17, 2002. The Agency believes that there has been sufficient time for end users to exhaust those existing stocks and for treated commodities to clear the channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.424 for residues of 2-(3,5-dichlorophenyl)-2-(2,2,2-trichloroethyl)-oxirane, called tridiphane, in or on corn, grain, field; corn, forage; and corn, stover.

15. *Triforine*. On December 24, 1997 (62 FR 67365)(FRL–5761–8), EPA published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of a request from the registrant to amend a triforine product registration and delete certain triforine uses, including almonds, apples, apricots, asparagus, blueberries, cherries, cranberries, nectarines, plums, and prunes. EPA approved the registrants' requests for voluntary deletion of these uses and allowed a period of 18 months for the registrant to sell and distribute existing stocks (until approximately the end of 1999). Also, on July 31, 1998 (63 FR 41145)(FRL–6015–8), EPA published a notice in the **Federal Register** which announced cancellation of a triforine registration for non-payment of 1998 maintenance fee and issuance of a cancellation order which permitted the registrant to sell and distribute existing stocks of the canceled product until January 15, 1999.

The Agency believes that end users had sufficient time (at least 3½ years beyond the endpoint for sale and distribution by registrants) to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.382(a) for residues of triforine in or on almond, hulls; almond; apple; apricot; bell pepper; blueberry; cantaloupe; cherry; cranberry; cucumber; eggplant; hop, dried cone; hop, spent; nectarine; peach; plum; plum, prune, fresh; strawberry; and watermelon; and in § 180.382(c) for residues of triforine in or on asparagus because no active U.S. registrations exist which cover those commodities.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 et seq., as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. Such food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. et seq.). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may

be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances or tolerance exemptions should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do These Actions Become Effective?

For this rule, the proposed actions will affect tolerances and tolerance exemptions for uses which have been canceled, in some cases, for many years. With the exception of certain tolerances for dinocap, ethion, and nicotine-containing compounds for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that these revocations, modifications, and commodity terminology revisions become effective 90 days following publication of a final rule in the **Federal Register**. EPA is proposing to delay the effectiveness of those revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions. With the exception of dinocap, ethion, and nicotine-containing compounds, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances and tolerance exemptions proposed for revocation have been completely exhausted and that treated commodities have cleared the channels of trade.

EPA is proposing expiration/revocation dates of February 14, 2004 for the dinocap tolerances on apple and grape. Also, EPA is proposing expiration/revocation dates of October 1, 2008 for the ethion tolerances on milk fat and the fat, meat, and meat byproducts of cattle. In addition, EPA is proposing expiration/revocation dates of December 4, 2005 for the nicotine-containing compounds tolerances on cucumber, lettuce, and tomato. The Agency believes that these revocation dates allow users time to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of November 20, 2003, EPA has reassessed 6,628 tolerances. This document proposes to revoke a total of 61 tolerances and tolerance exemptions, 3 of which were previously counted as reassessed (1 via the chlorpropham TRED and 2 via the dinocap RED). Therefore, 58 tolerances/exemptions would be counted as reassessed toward the August, 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance and tolerance exemption revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Statutory and Executive Order Reviews

In this proposed rule EPA is proposing to modify and revoke specific tolerances and tolerance exemptions established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 20, 2003.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.167 is amended by revising the table in paragraph (a) to read as follows:

§ 180.167 Nicotine-containing compounds; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Cucumber	2.0	12/4/05
Lettuce	2.0	12/4/05
Tomato	2.0	12/4/05

* * * * *

3. Section 180.173 is amended by revising the table in paragraph (a) to read as follows:

§ 180.173 Ethion; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Cattle, fat	0.2	10/1/08
Cattle, meat (fat basis)	0.2	10/1/08
Cattle, meat by-products	0.2	10/1/08
Citrus, dried pulp	25.0	10/1/08
Fruit, citrus, group 10	5.0	10/1/08
Goat, fat	0.2	10/1/08
Goat, meat	0.2	10/1/08
Goat, meat by-products	0.2	10/1/08
Hog, fat	0.2	10/1/08
Hog, meat	0.2	10/1/08
Hog, meat by-products	0.2	10/1/08
Horse, fat	0.2	10/1/08
Horse, meat	0.2	10/1/08
Horse, meat by-products	0.2	10/1/08
Milk, fat, reflecting negligible residues in milk	0.5	10/1/08
Sheep, fat	0.2	10/1/08
Sheep, meat	0.2	10/1/08
Sheep, meat by-products	0.2	10/1/08

* * * * *

§ 180.179 [Removed]

4. Section 180.179 is removed.

5. Section 180.276 is revised to read as follows:

§ 180.276 Formetanate hydrochloride; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide formetanate hydrochloride (m-[[(dimethylamino) methylene]amino]phenyl methylcarbamate hydrochloride) in or on raw agricultural commodities as follows:

Commodity	Parts per million
Apple	3.0
Grapefruit	4.0
Lemon	4.0
Lime	4.0
Nectarine	4.0
Orange, sweet	4.0
Peach	5.0
Pear	3.0
Tangerine	4.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.307 [Removed]

6. Section 180.307 is removed.

§ 180.319 [Amended]

7. Section 180.319 is amended by removing the Isopropyl m-chlorocarbanilate (CIPC) entry for spinach.

§ 180.325 [Removed]

8. Section 180.325 is removed.

9. Section 180.341 is revised to read as follows:

§ 180.341 2,4-Dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate; tolerances for residues.

(a) *General.* Tolerances are established for combined negligible residues of a fungicide and insecticide that is a mixture of 2,4-dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate in or on a raw agricultural commodoties as follows:

Commodity	Parts per million	Expiration/ Revocation Date
Apple	0.1	2/14/04
Grape	0.1	2/14/04

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§§ 180.344, 180.382, 180.424, 180.457,180.1012, 180.1051, and 180.1078 [Removed]

10. Sections 180.344, 180.382, 180.424, 180.457, 180.1012, 180.1051, and 180.1078 are removed.

[FR Doc. 03–30272 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[RCRA–2003–0005; SWH–FRL–7594–9]

RIN 2050–AE23

Comprehensive Procurement Guideline V for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) today is proposing an amendment to the May 1, 1995, Comprehensive Procurement Guideline (CPG) under the Resource Conservation and Recovery Act (RCRA) and the Executive Order ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.'' Specifically, EPA is proposing to revise the current compost designation to include compost made from manure or biosolids, and designate fertilizers made from recovered organic materials. EPA is also proposing to consolidate all compost designations under one item called ''compost made from recovered organic materials.''

EPA is required to designate items that are or can be made with recovered materials and to recommend practices that procuring agencies can use to procure designated items. Once EPA designates an item, any procuring agency that uses appropriated federal funds to procure that item must purchase the item containing the highest percentage of recovered materials practicable. Today's proposed action will use government purchasing power to stimulate the use of these materials in the manufacture of new products, thereby fostering markets for materials recovered from solid waste.

DATES: EPA will accept public comments on this proposed rule until February 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send your comments by mail to: OSWER Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0005. Follow the detailed instructions as provided in Unit I.C of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item designations, contact Sue Nogas at (703) 308–0199.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action may potentially affect those ''procuring agencies''—a term defined in RCRA section 1004(17)—that purchase the following: composts made from manure or biosolids and fertilizers made from recovered organic materials. For purposes of RCRA section 6002, procuring agencies include the following: (1) Any federal agency; (2) any state or local agencies using appropriated federal funds for a procurement; or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000. Potential regulated entities for this rule are shown in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

Category	Examples of regulated entities
Federal Government	Federal departments or agencies that procure $10,000 or more of a designated item in a given year.
State Government	A state agency that uses appropriated Federal funds to procure $10,000 or more of a designated item in a given year.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS—Continued

Category	Examples of regulated entities
Local Government	A local agency that uses appropriated Federal funds to procure $10,000 or more of a designated item in a given year.
Contractor	A contractor working on a project funded by appropriated Federal funds that purchases $10,000 or more of a designated item in a given year.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities of which EPA is now aware that could potentially be subject to regulatory requirements triggered by this action. To determine whether your procurement practices are affected by this action, you should carefully examine the applicability criteria in 40 CFR 247.2. If you have questions regarding the applicability of this action to a particular entity, consult the individuals listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. Copies cost $.15 per page.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*, and you may make comments on this proposed rule at the Federal e-rulemaking portal, *http://www.regulations.gov.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2003–0005. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact

information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to rcra-docket@epa.gov, Attention Docket ID No. RCRA–2003–0005. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. RCRA–2003–0005.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. Attention Docket ID No. RCRA–2003–0005. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket. Send or deliver information identified as CBI only to the following address: Document Control Officer (5305W), Office of Solid Waste, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0005. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Preamble Outline

I. What Is the Statutory Authority for This Proposed Amendment?

EPA (''the Agency'') is proposing this amendment to the Comprehensive Procurement Guideline under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976; 42 U.S.C. 6912(a) and 6962. This proposal also implements section 502 of Executive Order 13101 (Executive Order), ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition'' (63 FR 49643, September 14, 1998).

II. What Is the Background for This Action?

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to help procuring agencies meet their obligations for procuring items designated under RCRA section 6002. After EPA designates an item, RCRA requires that each procuring agency, when purchasing a designated item, must purchase that item made of the highest percentage of recovered materials practicable.

Executive Order 13101 establishes the procedure EPA must follow when implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. Concurrent with the CPG, EPA must publish recommended procurement practices for purchasing designated items, including recovered material content ranges, in a related Recovered Materials Advisory Notice (RMAN). The Executive Order also directs EPA to update the CPG every 2 years and to issue RMANs periodically to reflect changing market conditions.

The first CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items in seven of those categories, and consolidated five

earlier item designations.[1] At the same time, EPA also published a notice of availability of the first RMAN (RMAN I) (60 FR 21386). On November 13, 1997, EPA published CPG II (62 FR 60962), which designated an additional 12 items. At the same time, EPA published an RMAN II notice (62 FR 60975). Paper Products RMANs were issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214). On January 19, 2000, EPA published CPG III (65 FR 3070), which designated an additional 18 items. At the same time, EPA published an RMAN III notice (65 FR 3082). On August 28, 2001, EPA published a proposed CPG IV (66 FR 45256), which proposed to designate an additional 11 items. At the same time, EPA published a draft RMAN IV notice (66 FR 45297). EPA expects to promulgate the final CPG IV and publish a notice concerning the availability of RMAN IV in the near future. For more information on CPG, go to the EPA Web site at *http://www.epa.gov/cpg/*.

Today, in CPG V, EPA is proposing to revise the current compost designation to include composts made from manure or biosolids, and also designate fertilizers made from recovered organic materials.[2] [3] Both of these items fall under the Landscaping Products category of designations in the CPG.

A. What Criteria Does EPA Use for Selecting Items for Designation?

While not limiting consideration to these criteria, RCRA section 6002(e) requires EPA to consider the following when determining which items it will designate:

(1) Availability of the item;

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream;

(3) Economic and technological feasibility of producing the item; and

(4) Other uses for the recovered materials used to produce the item.

EPA consulted with Federal procurement and requirement officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the factors set forth in RCRA section 6002(c) should also be considered in its selection decisions. This provision requires each procuring agency that procures an item designated by EPA to procure the item composed of the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. A procuring agency, however, may decide not to procure an EPA-designated item containing recovered materials if it determines: (1) The item is not available within a reasonable period of time, (2) the item fails to meet the performance standards set forth in the Agency's specification, or (3) the item is available only at an unreasonable price.

EPA recognized that the above criteria limit the conditions under which procuring agencies must purchase EPA-designated items with recovered materials content, and, thereby, could limit the potential impact of an individual item designation on the demand for that recovered content item in the U.S. economy. (The limitations of RCRA section 6002(c) also effectively describe the circumstances in which a designated item is ''available'' for purposes of the statute.) For these reasons, EPA is also taking into account the limitations cited in RCRA section 6002(c) in its selection of items for designation in today's proposed CPG V. Thus, the Agency considers the following criteria in selecting items for designation: (1) use of materials found in solid waste; (2) economic and technological feasibility and performance; (3) impact of government procurement, availability and competition; and (4) other uses for recovered materials. These criteria are discussed in detail in Section II of the document entitled, ''Background Document for Proposed CPG V and Draft RMAN V.'' A copy of this document is included in the RCRA public docket for this rule.

EPA has adopted two approaches in its designation of items that are made with recovered materials. For some items, such as paper and paper products, the Agency designates broad categories of items and provides information in the related RMAN as to their appropriate applications or uses. For other items, such as plastic trash bags, EPA designates specific items, and, in some instances, includes in the designation the specific types of recovered materials or applications to which the designation applies. The Agency explained these approaches to designating items in the preamble to CPG I (60 FR 21373, May 1, 1995).

The Agency has learned that some procuring agencies may erroneously believe that the designation of a broad category of items in a CPG requires them (1) to procure all items included in such category with recovered materials content and (2) to establish an affirmative procurement program for the entire category of items, even where specific items within the category may not meet current performance standards. This is not required under RCRA as implemented through the CPGs and RMANs. RCRA section 6002 does not require a procuring agency to purchase recovered-content items that are not available or that do not meet a procuring agency's specifications or reasonable performance standards for the contemplated use. Further, section 6002 does not require a procuring agency to purchase such items if the item with recovered materials content is only available at an unreasonable price or the purchase of such item is inconsistent with maintaining a reasonable level of competition. However, EPA stresses that, when procuring any product for which a recovered materials alternative is available that meets the procuring agency's performance needs, the procuring agency should seek to purchase the product made with the highest percentage of recovered materials practicable.

The items proposed for designation today have all been evaluated with respect to EPA's criteria. Details of these evaluations are discussed in the ''Background Document for Proposed CPG V and RMAN V. Section IV of this preamble provides a summary of EPA's rationale for designating these items.

B. How Can I Comment on EPA's Proposed Rule?

EPA requests comments and information throughout this preamble. In general, the Agency is requesting comments on: (1) the items selected for designation and (2) the accuracy of the information presented in the discussions of the basis of the item designations. Requests for specific comments and information are included in the narrative discussions for each of the designated items, which follow in Section IV.

EPA also is requesting comments on the draft RMAN V published in the notice section of today's **Federal Register**. It includes procurement methods for each of the items EPA is proposing to designate today.

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[1] Between 1983 and 1989, EPA issued five guidelines for the procurement of products containing recovered materials, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These products include cement and concrete containing fly ash, paper and paper products, re-refined lubricating oils, retread tires, and building insulation.

[2] A number of parties have asked EPA to consider the following items for future CPG designations: asphalt, electronics, industrial ceramics, offset guardrail blocks, roofing sealants and refuse-derived fuel, EPA will consider these for future designation.

[3] This regulatory proposal is an important component of EPA's recently announced ''Resource Conservation Challenge,'' which is designed to encourage and provide new incentives for increased reuse and recycling of materials (for further information on this initiative, see *www.epa.gov/epaoswer/osw/conserve/index.htm.)*

C. Where Can I Find Additional Information on This Proposed Rule?

For additional background information, including information on RCRA requirements, Executive Order directives, and the criteria and methodology for selecting the proposed designated items, please consult ''Background Document for Proposed CPG V and Draft RMAN V.'' Information on obtaining this background document is provided in Section VII, Supporting Information and Accessing Internet.

III. What Are the Definitions of Terms EPA Used in Today's Proposed Rule?

Today, in § 247.3, EPA is proposing to revise the previous definition of compost from CPG III (65 FR 3070) and add the term, and a definition for, ''organic fertilizer.'' Specifically, EPA is proposing to define compost as ''* * * a thermophilic converted product with high humus content. Compost can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off,'' and define organic fertilizer as ''* * * a single or blended substance, made from organic matter, such as plant and animal by-products, manure-based/biosolid products, and rock and mineral powders, that contains one or more recognized plant nutrient(s) and is used primarily for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth.'' These new definitions are based on common industry and United States Department of Agriculture (USDA) definitions. EPA specifically requests comments on each of these definitions.

IV. Landscaping Products

A. Compost Made From Manure or Biosolids

The information obtained by EPA demonstrates that compost made from manure or biosolids is commercially available. Therefore, today in § 247.15(b), EPA proposes to revise the current compost designation to include compost made from manure or biosolids as an item whose procurement will carry out the objectives of section 6002 of RCRA. Furthermore, in order to simplify the designation of compost and make it easier for procuring agencies to track and report their purchases of compost, the Agency is also proposing to amend the previous designations of yard trimmings compost and food waste compost and consolidate them with the designation of compost made from manure or biosolids into one item called ''compost made from recovered organic materials.'' EPA believes that these four organic materials (*i.e.*, yard waste, food waste, manure, and biosolids) are the most commonly used in commercially available compost. EPA is also aware that other organic materials could be used in compost, but these are generally mixed with one or more of the aforementioned materials. For this reason, EPA is proposing to use the general term ''organic materials'' in its compost designation, rather than limit the designation to specific types of organic materials.

1. Background

Compost has a variety of uses and improves soil quality and productivity as well as preventing and controlling erosion. Mixed organic materials, such as animal manure, yard trimmings, food waste, and biosolids, must go through a controlled heat process before they can be used as high quality, biologically stable, and mature compost. The U.S. Composting Council defines compost as the stabilized and sanitized product of composting; compost is largely decomposed material and is in the process of humification (curing). Compost has little resemblance in physical form to the original material from which it was made. Compost is a soil amendment, to improve soils. Compost is not a complete fertilizer unless amended, although composts contain fertilizer properties, *e.g.*, nitrogen, phosphorus, and potassium, that must be included in calculations for fertilizer application.

2. Rationale for Designation

EPA has concluded that composts made from recovered organic materials meet the statutory criteria for designation. A final designation would require that a procuring agency, when purchasing compost, purchase compost containing recovered organic materials, such as yard trimmings, food waste, animal manure, and biosolids, when the compost meets applicable specifications and performance requirements.

a. Use of materials in solid waste. Using manure and biosolids compost has great potential to make beneficial use of a large amount of the animal manure and biosolids produced in the United States. In addition, because other materials may serve as bulking agents in manure and biosolids compost, designation of this item may increase the level of recovered material diverted from the solid waste stream further. The recovered materials used as bulking agents include sawdust, extruded rice husks, straw, leaves, wood chips, corn stalks, and ground tree and shrub trimmings.

In the United States, beef cattle generate 27 million tons of manure solids annually and dairy cattle in confinement produce approximately 21 million tons of solids annually. Swine produce about 16 million tons of solid waste annually.

EPA estimates that the 16,000 public owned treatment works in the United States generate approximately 7 million tons of sewage sludge annually. Until 1992, millions of tons of biosolids were dumped into the Atlantic Ocean. This practice, however, was made illegal as a result of public concern over ocean pollution. About 60 percent of all sewage sludge is treated to generate biosolids that are beneficially used as a fertilizer on farmland. Of the remainder, 17 percent ends up buried in a landfill; 20 percent is incinerated; and about 3 percent is used as landfill or mine reclamation cover.

b. Technically proven uses. Compost can be used in a variety of applications including:

- Soil enrichment: agriculture (soil conditioning, fertilizer amendment, erosion control, development of marginal lands, mulch, rooting medium, sod production); silviculture; horticulture.
- Pollution remediation (treatment of contaminated soils and reclamation of mining waste).

In addition to the primary benefits achieved from using compost in these ways, these applications have the added benefit of preventing pollution by reducing the amount of chemicals normally used and reducing nonpoint source pollution and VOC emissions associated with those chemicals.

It should also be noted that, if improperly managed, animal manures generated by beef feedlot and dairy operations can and have created significant environmental problems, including human health issues caused by contamination of surface water and groundwater. Using animal manures as a raw material for compost, as opposed to applying it directly to the land or stockpiling it, can alleviate many of these problems, while providing an important agricultural service.

EPA and USDA finalized a rule that requires Concentrated Animal Feeding Operations (CAFOs) to obtain permits, submit annual reports, and develop and follow plans for handling manure and wastewater (68 FR 7176, February 12, 2003). In EPA's view, this rule may encourage feeding operations to compost their manure as an agricultural or landscaping product. This will not only benefit the environment, but more of this compost will be available for purchase and use.

In addition, EPA issued regulations in 1993 that limit the pollutants and

pathogens in biosolids, entitled ''The Standards for the Use or Disposal of Sewage Sludge,'' otherwise known as ''the Part 503 Biosolids Rule.'' (40 CFR part 503) If biosolids are included as part of the compost, the processing and product are subject to the Part 503 Biosolids Rule. Furthermore, if the finished compost product meets 40 CFR part 503 Biosolids Rule Class A specifications for the highest level of pathogen and vector control (as described in section 2.3.1 of part 503) and specific metals limits, the compost product can be widely used, like any other fertilizer or soil-conditioning product.

Most States have their own regulations governing composting facilities and the marketing of compost products. The U.S. Composting Council (USCC) has developed protocols, called ''Test Methods for the Examination of Composting and Compost (TMECC),'' which are standardized methods for the composting industry to test and evaluate compost and verify the physical, chemical, and biological characteristics of composting source materials and compost products. The TMECC also includes material testing guidelines to ensure product safety and market claims. USCC's Seal of Testing Assurance program includes standards for testing procedures of composted materials for nutrients, moisture, salt content, and chemicals.

The U.S. Department of Transportation's (U.S. DOT) Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects 1996 specifies mature compost for use as a roadside improvement material.

Pursuant to recently passed legislation, USDA will be issuing guidelines on biobased products which could include composts made from plant or animal byproducts. Any specifications issued under the USDA guidelines which may be germane to the CPG designation and RMAN recommendations may be referenced by EPA in the future.

c. Impact of government procurement. A Presidential memorandum entitled ''Environmentally and Economically Beneficial Practices on Federal Landscaped Ground'' was signed on April 26, 1994 encourages agencies to develop practical and cost-effective landscaping methods that preserve and enhance the local environment. This memorandum requires the use of mulch and compost by Federal agencies and in Federally funded projects.

Government agencies typically use compost and fertilizers for numerous applications, including landscaping, agriculture, bioremediation, roadside maintenance, and erosion control. Although EPA does not know the exact amounts of these materials used by agencies, it believes it is significant, and that composts made from manure or biosolids could be used in many of these applications.

d. Other Uses for Recovered Materials. In selecting items for consideration, EPA also considers the following: (1) The possibility of one recovered material displacing another recovered material as feedstock, thereby resulting in no net reduction in materials requiring disposal; (2) the diversion of recovered materials from one product to another, possibly creating shortages in feedstocks for one or both products; and (3) the ability of manufacturers to obtain recovered materials in sufficient quantities to produce the item under consideration.

While other uses for recovered materials are a consideration, they are not a determining factor when selecting items for designation, because EPA believes an item designation would have the positive effect of expanding markets for all recovered materials used to manufacture the designated item.

B. Fertilizers Made From Recovered Organic Materials

The information obtained by EPA demonstrates that fertilizers containing recovered organic materials are commercially available. Therefore, today in § 247.15(f), EPA proposes to designate fertilizers containing recovered organic materials as an item whose procurement will carry out the objectives of section 6002 of RCRA.

1. Background

In order to compensate for the limited supply of vital nutrients and to provide the plant with the necessary environment to fully mature, fertilizers are often added to soil. The most essential nutrients—nitrogen, phosphorus, and potassium—are often expressed as the N–P–K ratio following the name of a fertilizer (*e.g.*, 10–10–10).

Many sources of organic matter are available for the production of organic fertilizers, including plant and animal by-products, manure-based/biosolid products, and rock and mineral powders.

Organic fertilizers can be used to replace traditional chemical fertilizers in various applications, such as agriculture and crop production, landscaping, horticulture, parks and other recreational facilities, on school campuses, and for golf course and turf maintenance.

2. Rationale for Designation

EPA has concluded that fertilizers containing recovered organic materials meet the statutory criteria for selecting items for designation. A final designation would require that a procuring agency, when purchasing fertilizers, procure those that contain recovered organic materials when they meet applicable specifications and performance requirements.

a. Use of materials in solid waste. Organic fertilizers can contain up to 100 percent recovered materials and can have a mixture of various plant, animal, and mineral content depending on the desired use and the manufacturer. The use of organic fertilizers can help reduce the amount of agricultural by-products, manufacturing and processing waste, and other materials that would otherwise have to be disposed, stockpiled, or treated. These organic materials may be combined with other waste materials, such as saw dust or wood shavings, as is the case with poultry fertilizer. The amount of these wastes diverted from the waste stream varies depending on the materials used and the size of the farm or agricultural activity that supplies the materials.

b. Technically proven uses. Organic fertilizers have the potential to provide various benefits:

- Improve physical soil properties, either directly or by activating living organisms in the soil.
- Provide better soil structure as a result of soil loosening and crumb stabilization.
- Increase water-holding capacity and soil aeration.
- Enhance uptake and utilization of plant nutrients, which leads to increased pathogen resistance and hardiness.
- Slow the leaching of nutrients from soil, resulting in extended availability through the growing season.

As noted above, and pursuant to recently passed legislation, USDA will be issuing guidelines on biobased products which could include fertilizers made from plant or animal matter. Any specifications issued under the USDA guidelines which may be germane to the CPG designation and RMAN recommendations may be referenced by EPA in the future.

The Organic Materials Review Institute (OMRI) has developed lists of materials allowed and prohibited for use in the production, processing, and handling of organically grown products. Samples from these lists can be found at *http://www.omri.org.* It also should be noted that organic fertilizers being made or sold should comply with all

applicable Federal, State, and local regulations. Many states have their own guidelines and regulations for fertilizer production and use. For example, a state may prohibit the use of organic fertilizer made with biosolids on agricultural food crops.

In addition, as mentioned above, biosolids can be used in the production of organic fertilizer and must meet the requirements specified in EPA's part 503 Biosolids Rule before they can be beneficially used. The 40 CFR part 503 Biosolids Rule land application requirements ensure that any biosolids that are land applied contain pathogens and metals that are below specified levels to protect the health of humans, animals, and plants.

In proposing to designate fertilizers made from recovered organic materials, EPA is not placing any limitations on the organic materials, but rather is relying on Federal, State, and local regulations and guidance, as well as existing industry standards. EPA is requesting comment on whether it should place any limitations on the recovered organic materials contained in the fertilizers that the Agency today is proposing to designate, and on what those limitations should be.

c. Impact of government procurement. Government agencies purchase, or use appropriated funds to purchase, fertilizers. Although most government agencies would likely purchase fertilizers indirectly via a contracted landscaping service, it is nevertheless clear that agencies have a demand for fertilizers, for applications such as landscaping, golf course and turf maintenance, and as an amendment for grass, bushes, and trees in parks and recreational facilities. According to one procurement official, even though fertilizers are generally part of contracted services, agencies are at liberty to specify a particular type of nutrient analysis for any type of fertilizer (organic or synthetic) they would like to use.

EPA does not have specific data on the amount of fertilizers procured by government agencies, although EPA believes that the quantities are substantial. Thus, the agency believes these items are procured in sufficient quantities to support the designation of these items.

d. Other Uses for Recovered Materials. In selecting items for consideration, EPA also considers the following: (1) The possibility of one recovered material displacing another recovered material as feedstock, thereby resulting in no net reduction in materials requiring disposal; (2) the diversion of recovered materials from one product to another, possibly creating shortages in feedstocks for one or both products; and (3) the ability of manufacturers to obtain recovered materials in sufficient quantities to produce the item under consideration.

While other uses for recovered materials are a consideration, they are not a determining factor when selecting items for designation, because EPA believes an item designation would have the positive effect of expanding markets for all recovered materials used to manufacture the designated item.

V. Where Can Agencies Get More Information on the Availability of EPA-Designated Items?

EPA has identified a number of manufacturers and vendors of the items proposed for designation in today's rule. Once the item designations in today's proposal become final, a list of these companies will be placed in the OSWER Docket for this action and will be added to EPA's CPG Supplier Database, which is accessible from the CPG Web site *http://www.epa.gov/cpg.* This database will be updated periodically as new sources of designated items are identified and product information changes. Procuring agencies should contact the manufacturers and vendors directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled products meeting those needs.

Other information may be available from GSA, DLA, state and local recycling offices, private corporations, and trade associations. Refer to Appendix II of the document, ''Background Document for Proposed CPG V and Draft RMAN V,'' located in the OSWER Docket, for more detailed information on these sources of information.

VI. Administrative Assessments

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant'' regulatory action as one that is likely to result in a proposed rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. EPA estimates that the costs associated with today's proposed rule are well below the $100 million threshold. EPA has prepared an Economic Impact Analysis (EIA) to evaluate the potential impact of today's action. The results of the EIA are discussed below. More information on the estimated economic impact of today's proposed rule is included in the Economic Impact Analysis for this proposed rule, a copy of which is in the OSWER docket.

1. Summary of Costs

As shown in Table 2 below, EPA estimates that the annualized costs of today's proposed rule will range from $1.2 to $2.3 million, with costs being spread across all procuring agencies (*i.e.*, Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and government contractors). These costs are annualized over a 10-year period at a three percent discount rate. Details of the costs associated with today's proposed rule are provided in the Economic Impact Analysis for this proposed rule.

TABLE 2.—SUMMARY OF ANNUALIZED COSTS OF PROPOSED CPG V AMENDMENTS TO ALL PROCURING AGENCIES

Procuring agency	Total annualized costs ($1000)	Best estimate total annualized costs ($1000)
Federal Agencies	$577–$1,153	$1,153
States	207–413	413
Local Governments	361–722	722
Contractors	10–20	20
Total	1,154–2,308	2,308

As a result of today's proposed rule, procuring agencies will be required to take certain actions pursuant to RCRA section 6002, including rule review and implementation; estimation, certification, and verification of designated item procurement; and for Federal agencies, reporting and recordkeeping. The costs shown in Table 2 represent the estimated annualized costs associated with these activities. Table 2 also includes estimates for Federal agencies that will incur costs for specification revisions and affirmative procurement program modification. More details of the costs associated with today's proposed rule are included in the Economic Impact Analysis.

There may be both positive and negative impacts to individual businesses, including small businesses. EPA anticipates that today's proposed rule will provide additional opportunities for recycling businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for recovered materials. These include businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs are also expected to benefit from increased demand for certain materials collected in recycling programs.

EPA is unable to determine the number of businesses, including small businesses, that may be adversely impacted by today's proposed rule. For example, if a business currently supplies products to a procuring agency and those products are made only out of virgin materials, the amendments to the CPG may reduce that company's ability to compete for future contracts. However, the amendments to the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet new specifications or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. The relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than similar virgin products. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left up to the procuring agency.

3. Summary of Benefits

EPA anticipates that today's proposed rule will result in increased opportunities for recycling and waste prevention. Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Using less raw materials results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing. Additionally, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other raw material extraction processes.

Recycling can affect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources. In addition to conserving non-renewable resources and reducing the environmental impacts associated with resource extraction and processing, recycling can also divert large amounts of materials from landfills, thus reducing waste disposal costs and conserving increasingly valuable space for the management of materials that truly require disposal.

By purchasing products made from recovered materials, government agencies can increase opportunities for all of these benefits. On a national and regional level, today's proposed rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many state and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses involved in recycling activities.

B. Paperwork Reduction Act

This proposed rule contains no new information collection requirements. Therefore, this rule is not subject to the Paperwork Reduction Act.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts on small entities of today's rule, small entity is defined as: (1) A small business as defined by RFA default definitions for small business (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

EPA evaluated the potential costs of its proposed designations to determine whether its actions would have a significant impact on a substantial number of small entities. In the case of small entities that are small governmental jurisdictions, EPA has concluded that the proposal, if promulgated, will not have a significant economic impact. EPA concluded that no small government with a population of less than 50,000 is likely to incur costs associated with the designation of the 2 items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, RCRA section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of RCRA section 6002 would impose significant additional costs on the small governmental entity to comply in the event that a small governmental jurisdiction purchased more than $10,000 worth of a designated item. This is the case because in many instances, items with recovered materials content may be less expensive than items produced from virgin material.

Furthermore, EPA similarly concluded that the economic impact on small entities that are small businesses would not be significant. Any costs to small businesses that are ''procuring agencies'' (and subject to RCRA section 6002) are likely to be insubstantial. RCRA section 6002 applies to a contractor with a Federal agency (or a state or local agency that is a procuring agency under section 6002) when the contractor is purchasing a designated item, is using Federal money to do so, and exceeds the $10,000 threshold. There is an exception for purchases that are ''incidental to'' the purposes of the contract, *i.e.*, not the direct result of the funds disbursement. For example, a courier service contractor is not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matter, there would be very limited circumstances when a contractor's status as a ''procuring agency'' for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if a state or Federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price. Any costs to small businesses that are ''procuring agencies'' (and subject to section 6002) are likely to be insubstantial. Even if a small business is required to purchase other items with recovered materials content, such items may be less expensive than items with virgin content.

After considering the economic impacts of today's proposed rule on small entities, EPA certifies that the proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

This proposal, therefore, does not require a regulatory flexibility analysis. The basis for EPA's conclusions that today's proposed rule, if adopted, will not have a significant impact on a substantial number of small entities is described in greater detail in the EIA for the proposed rule.

While not a factor relevant to determining whether the proposed rule will have a significant impact for RFA purposes, EPA has concluded that the effect of today's proposed rule would be to provide positive opportunities to businesses engaged in recycling and the manufacture of recycled products. Purchase and use of recycled products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of recovered materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202, EPA generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with Federal mandates that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's proposed rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State or local or tribal governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this proposed rule on State and local governments, they are exempt from inclusion as Federal intergovernmental mandates if such duties are conditions of Federal assistance. Even if they are not conditions of Federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon State and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, $1.1 million annually. The cost of enforceable duties that may arise as a result of today's proposed rule on the private sector are estimated not to exceed $20,000 annually. Thus, the proposed rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The designated items included in the proposed CPG V may give rise to additional obligations under section 6002(i) (requiring procuring agencies to adopt affirmative procurement programs and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, $1.1 million annually. In compliance with Executive Order 12875 entitled Enhancing the Intergovernmental Partnership, 58 FR

58093 (October 28, 1993), which requires the involvement of state and local governments in the development of certain Federal regulatory actions, EPA conducts a wide outreach effort and actively seeks the input of representatives of state and local governments in the process of developing its guidelines.

When EPA proposes to designate items in a CPG, information about the proposal is distributed to governmental organizations so that they can inform their members about the proposals and solicit their comments. These organizations include the U.S. Conference of Mayors, the National Association of Counties, the National Association of Towns and Townships, the National Association of State Purchasing Officials, and the American Association of State Highway and Transportation Officials. EPA also provides information to potentially affected entities through relevant recycling, solid waste, environmental, and industry publications. In addition, EPA's regional offices sponsor and participate in regional and state meetings at which information about proposed and final designations of items in a CPG is presented. Finally, EPA has sponsored buy-recycled education and outreach activities by organizations such as the U.S. Conference of Mayors, the Northeast Recycling Council, Environmental Defense, Keep America Beautiful, and the California Local Government Commission, whose target audience includes small governmental entities.

The requirements do not significantly affect small governments, because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to state and local governments is not expected to exceed, at the maximum, $1.1 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities. Thus, any applicable requirements of section 203 of the Act have been satisfied.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule will not impose substantial costs on states and localities. A final rule would require procuring agencies to perform certain activities pursuant to RCRA section 6002, including rule review and implementation, and for Federal agencies, reporting and record keeping. As noted above, EPA estimates that the total annualized costs of today's proposed rule will range from $1.2–$2.3 million. EPA's estimate reflects the costs of the rule for all procuring agencies (*i.e.,* Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and government contractors), not just states and localities. Thus, the costs to states and localities alone will be even lower and not substantial. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13175 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any mandate on tribal governments or impose any duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this proposal.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that EPA determines is (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets the Executive Order 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not involve decisions regarding environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (''NTTAA''), Pub. L. No. 104–113, Section 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent

with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not establish technical standards. Therefore, the Agency has not conducted a search to identify potentially applicable test methods from voluntary consensus standard bodies. As part of this rulemaking effort, EPA has developed guidance for procuring agencies to use in complying with section 6002's obligation to purchase items with recovered materials content to the maximum extent practicable. These recommendations include reference to any known industry standards and, as previously noted, are published today in the companion RMAN for the designated items. In developing these recommendations, EPA did consider current voluntary consensus standards on recovered materials content.

VII. Supporting Information and Accessing Internet

The index of supporting materials for today's proposed CPG V is available in the OSWER Docket and on the Internet. The address and telephone number of the OSWER Docket are provided in the **SUPPLEMENTARY INFORMATION** section above. To access information on the Internet, go to the EPA Dockets Web site at *http://www.epa.gov/edocket/.* The index and the following supporting materials are available in the OSWER Docket and on the Internet:

''Background Document for Proposed CPG V and Draft RMAN V,'' U.S. EPA, Office of Solid Waste and Emergency Response, March 2003.

''Economic Impact Analysis for Proposed Comprehensive Procurement Guideline V,'' U.S. EPA, Office of Solid Waste and Emergency Response, March 2003.

Copies of the following supporting materials are available for viewing at the OSWER Docket only:

''Recovered Materials Product Research for the Comprehensive Procurement Guideline V,'' Draft Report, December 2002.

List of Subjects in 40 CFR Part 247

Environmental protection, Government procurement, Recycling.

Dated: November 25, 2003.

Michael O. Leavitt,

Administrator.

For the reasons discussed in the preamble, EPA proposes to amend 40 CFR part 247 as follows:

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

1. The authority citation for part 247 continues to read as follows:

Authority: 42 U.S.C. 6912(a) and 6962; E.O. 13101, 63 FR 49643, 3 CFR, 1998 Comp., P. 210.

2. Amend § 247.3 by revising the definition of ''Compost'' and by adding in alphabetical order a new definition for ''Organic fertilizer'' to read as follows:

§ 247.3 Definitions.

* * * * *

Compost is a thermophilic converted product with high humus content. Compost can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off.

* * * * *

Organic fertilizer is a single or blended substance, made from organic matter such as plant and animal by-products, manure-based/biosolid products, and rock and mineral powders, that contains one or more recognized plant nutrient(s) and is used primarily for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth.

* * * * *

3. In § 247.15, revise paragraph (b) and add paragraph (f) to read as follows:

§ 247.15 Landscaping products.

* * * * *

(b) Compost made from recovered organic materials.

* * * * *

(f) Fertilizers made from recovered organic materials.

* * * * *

[FR Doc. 03–30266 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 03–201; FCC 03–223]

Modification of the Commission's Rules for Unlicensed Devices and Equipment Approval

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to review and update certain rules contained in the Commission's rules. We take these actions as part of our ongoing process of updating our rules to promote more efficient sharing of spectrum used by unlicensed devices and remove unnecessary regulations that inhibit such sharing.

DATES: Comments must be filed on or before January 9, 2004, and reply comments must be filed on or before January 26, 2004.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: *Neal.McNeil@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* ET Docket No. 03–201, FCC 03–223, adopted September 10, 2003, and released September 17, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 9, 2004, and reply comments on or before January 26, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed.

If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of Notice of Proposed Rulemaking

A. Proposed Revisions to Part 15

1. *Advanced Antenna Technologies.* Systems employing advanced antenna designs such as sectorized antennas and phased array adaptive antennas are now being used, or contemplated for use, as part of wide area network systems operating in the 2.4 GHz band. Sectorized antenna systems take a traditional omnidirectional coverage area and subdivide it into fixed sectors that are each covered using a single beam or antenna element to transmit desired information to all devices in the sector. For example, a sectorized system can be made from two individual antennas, each covering 60°of azimuth around the antenna structure, resulting in 120° of coverage. Operationally, each sector is treated as a different cell, the range of which is greater than that of a system using a single omnidirectional antenna. A phased array antenna system consists of a group of radiating elements arranged and driven in such a way that their radiated fields add in some directions and cancel in others. The combined fields can produce a single beam, or multiple beams pointing in various directions while minimizing radiation in other areas. Properties of the resultant beams such as intensity, direction, or beamwidth can be adjusted by altering the input signal to each radiating element.

2. We believe that it is in the public interest to accommodate efficiently configured sectorized and phased array antenna technologies. To date, the Commission has not generally authorized the operation of sectorized antennas by spread spectrum systems, but, by individual interpretation of its rules, we have allowed a few phased array systems to operate. However, we are receiving an increasing number of questions about how to accommodate these multiple beam systems in spread spectrum operations. After taking these requests under consideration, we tentatively conclude that spread spectrum systems using sectorized and/or phased array systems could provide important benefits for providing communications to a local area. Therefore, we believe that we should revise the rules to clearly facilitate broader deployment of advanced antenna designs with spread spectrum systems and to provide a stable environment in which to foster the continued development and installation of these spectrum efficient technologies.

3. We seek comment regarding the characteristics that a system would need to exhibit in order to be classified as a sectorized or phased array antenna system. As an initial matter, we propose to clarify that sectorized or phased array antenna systems must be capable of forming at least two discrete beams. Second, we propose to limit the total simultaneous beamwidth radiating from the antenna structure to 120°, regardless of the number of beams formed. The 120° of bandwidth need not be continuous and may be divided among various independent beams pointing in different directions around the antenna structure. Commenting parties should provide detailed suggestions regarding any additional modes of operation that should be considered acceptable as a definition for sectorized or phased array installations.

4. Sectorized and phased array antenna systems divide the total power from a transmitter among various transmission azimuths and the power may be distributed equally or at varying levels among those azimuths. The radiated emissions are directionalized along each sector or azimuth in order to communicate with an associated receiver. Accordingly, these antenna systems may resemble point-to-point operation at any given moment. Therefore, we propose to allow such systems to operate at the same power levels as point-to-point directional antennas. Specifically, we propose to limit the total power that may be applied to each individual beam to the applicable power level specified in 47 CFR 15.247(b), *i.e.,* 0.125 watt or 1 watt, depending upon the type of modulation used. This implies that the total operating power, the aggregate power in all beams, could exceed the output power permitted for a single point-to-point system. We propose, therefore, to limit the aggregate power transmitted simultaneously on all beams to 8 dB above the limit for an individual beam. For instance, the 8 dB limit will enable antenna systems to create up to 6 individual beams or sectors, all operating at the point-to-point limit. Finally, we propose to require that the transmitter output power be reduced by 1 dB for each 3 dB that the directional antenna gain of the complete system exceeds 6 dBi. We seek comment on these proposals. Further, we seek comment with regard to whether the Commission should specify a maximum E.I.R.P. limit for each individual beam. If so, what should that limit be?

5. *Replacement Antennas for Unlicensed Devices.* We wish to develop more flexible antenna requirements for unlicensed devices. We propose to provide that flexibility by requiring testing only with the highest gain antenna of each type that would be used with the transmitter at the maximum output power of that transmitter. Any antenna of a similar type that does not exceed the antenna gain of tested antennas may be used without retesting. Use of an antenna of a different type than the tested antenna (*i.e.* yagi antenna vs. a horn antenna) or one that exceeds the gain of a tested antenna would require retesting and new approval by either a Telecommunication Certification Body or the Commission. Manufacturers would be expected to

supply a list of acceptable antenna types with applications for equipment authorization.

6. *Flexible Equipment Authorization for Radio Transmission Systems.* We are proposing a number of rule changes to enable WISPs to customize their transmission systems without the need to obtain a new equipment authorization for every combination of components. Specifically, we will allow professional radio system installers and parties that offer a commercial radio service under the unlicensed rules to substitute technically equivalent components in systems that have been granted equipment authorization. We believe such parties have the technical competence to ensure that the systems they deploy continue to comply with the FCC rules. We invite comment as to whether specific criteria are necessary to qualify as a professional radio system installer or commercial service provider, and if so, what those criteria should be. We also request views as to whether any other parties should be afforded similar flexibility. We will require the professional installer or commercial service provider to place a label on the transmission system that lists the FCC Identification Number of the system that was granted equipment authorization, identifies any components that were substituted, and designates a point of contact for the party that installed the system.

7. We also propose to allow marketing of separate radio frequency power amplifiers on a limited basis. We will restrict such marketing to amplifiers that are only capable of operation under the spread spectrum rules in § 15.247 and under the U–NII rules for the 5750–5850 MHz band. Further, we propose to require that such amplifiers obtain an equipment authorization (certification) and demonstrate that they cannot operate with an output power of more than 1 Watt, which is the maximum permitted under the rules. We believe that this rule change would be of benefit not only for WISPs, but also for consumers and businesses generally. We invite comment as to whether we should instead provide only a more narrow relaxation to allow separate marketing of power amplifiers that are designed in a way such that they can only be used with a specific system that is covered by an equipment authorization, such as through use of a unique connector or via an electronic handshake with a host device. We also recognize that frequency hopping systems that employ fewer than 75 hops are limited to an output power of 125 mW and invite comment as to whether the unique connector requirement may be necessary to ensure that 1 Watt amplifiers are not used with devices that are limited to 125 mW. We invite comment on these proposals and solicit views on other ways the equipment authorization rules might be modified to provide added flexibility without creating undue risk of interference to radio services or unlicensed devices.

8. *Measurement Procedures for Digital Modulation Systems.* We propose to harmonize the measurement procedures for digital modulation devices authorized under § 15.247 with the digital U–NII devices authorized under § 15.407. Specifically, we propose to allow entities performing compliance testing for § 15.247 devices to use an average, rather than overall peak, emission as provided by § 15.407, paragraphs (a)(4) and (a)(5) when measuring transmit power. We propose this change for devices using digital modulation that operate in the 915 MHz, 2.4 GHz and 5.7 GHz bands. We seek comment on whether a change in measurement procedure for such devices would have any detrimental impact on the installed base of products.

9. *Frequency Hopping Channel Spacing Requirements.* In its comments filed in response to the 2002 Regulatory Flexibility Act Review, the Bluetooth Special Interest Group (Bluetooth SIG) suggests a modification of the channel separation requirement for frequency hopping spread spectrum systems. Section 15.247(a)(1) of the rules requires that frequency hopping systems have hopping channel center frequencies separated by either a minimum of 25 kHz or the 20 dB bandwidth of the hopping channel, whichever is greater. The Bluetooth SIG requests that this channel spacing requirement be modified to allow hopping channel carrier frequencies to be more closely spaced. In particular, it seeks to modify the requirement to allow a separation of a minimum of 25 kHz or two-thirds of the 20 dB bandwidth of the hopping channel, whichever is greater. Although the request did not specify the operating band to which the changes should apply, we interpret the request as being applicable to devices operating in the 2.4 GHz band because the Bluetooth product line operates in the 2.4 GHz band.

10. We propose to modify the frequency hopping spacing requirement to permit certain systems in the 2.4 GHz band to utilize hopping channels separated by either 25 KHz or two-thirds of the 20 dB bandwidth, whichever is greater. We recognize that although a single device's channels will not overlap in time, the use of multiple devices simultaneously in a given area may cause the spectral occupancy and power density to increase, leading to an increased risk of interference. Therefore, we seek comment on the interference potential of new waveforms with more gradual roll-off and potentially higher spectral power densities at the channel band edges.

11. *Part 15 Unlicensed Modular Transmitter Approvals.* The *NPRM* proposes to codify the requirements for authorization of modular transmitters into our rules. These transmitters are self-contained devices missing only a power supply and data source to make them functional. Once authorized, the transmitters can be installed into a number of different devices to provide wireless connectivity. The completed combination does not need further Commission approval, saving manufacturers the time and expense associated with multiple authorizations.

12. Currently, in order to have modular transmitters authorized, manufacturers must follow guidance contained in a public notice issued by the Office of Engineering and Technology. A new class of modular transmitters is now under development. These new modules consist of two or more sub-components, each of which may be incorporated in different assemblies. In order to accommodate this new technology, we propose to incorporate the guidance contained in the Office of Engineering and Technology public notice into the Commission's rules. We also propose appropriate changes to facilitate the authorization of developing modular transmitter technology.

13. *Improving Sharing in the Unlicensed Bands.* We invite comment on whether a spectrum sharing etiquette should be considered for devices that operate on an unlicensed basis, in addition to Unlicensed PCS devices. If so, should the Commission or the industry develop the criteria establishing access conditions? What characteristics need to be considered (*e.g.* spectrum monitoring requirements, bandwidth limits, variable output power levels)? Could an etiquette be implemented in such a way as to ensure continued flexibility for technological development, which has been the cornerstone of unlicensed operation? If a spectrum sharing etiquette is feasible, we seek comment regarding the bands to which the etiquette should apply. Finally, given the number of unlicensed devices currently in operation without a sharing etiquette, how effective will such an etiquette imposed on new entrants be in improving spectrum sharing?

14. *Special Temporary Authority.* We are proposing to delete the provisions in § 15.7 of the rules for obtaining a Special Temporary Authority (STA). The Office of Engineering and Technology has not granted any STAs under part 15 nor had any formal requests for an STA under these rules in the last 10 years. We believe that this need is being met through the allowances for STAs under the provisions in part 5 for experimental licenses. We invite comment as to whether there is any need to maintain the part 15 provisions for STAs.

B. Proposed Revisions to Part 2

15. *Import Conditions.* Section 2.1204 of the rules limits the importation of radio frequency devices that have not yet received equipment authorization and are not intended for operation within one of the Commission's licensed services to 200 or fewer units for testing and evaluation, and 10 or fewer units for demonstration at industry trade shows, provided the devices will not be offered for sale or marketed. Devices intended for use in a licensed service can be imported in greater numbers; 2000 or fewer for testing and evaluation and 200 or fewer for demonstration purposes.

16. Hewlett-Packard (''HP'') asks that the Commission increase the number of devices, not intended for use in a licensed service, that may be imported to 2000 or fewer for testing and evaluation and 100 or fewer for demonstration purposes. Furthermore, HP requests that the modified rules be expanded to permit demonstration prototypes to be used, in addition to trade shows, for any other purpose designed to build market awareness. As an alternative to the suggested rule changes, HP states that the Commission could consider combining §§ 2.1204(a)(3) and 2.1204(a)(4) to create a limit of 2100 devices for all pre-authorized units to be used for, ''design refinement, software development, marketing and customer support program development, or any other needed product development purpose, including promoting market awareness.''

17. We believe that a relaxation of the import restrictions may be appropriate for devices not intended for use in licensed services. However, we seek comment on the potential for abuse of a revised importation rule. Further, we seek comment on HP's proposal to modify our rules to permit demonstration prototype to be used ''for any purpose designed to build market awareness.''

18. *Electronic Filing. Section 2.913(c) Submittal of equipment authorization application or information to the Commission.* Currently, the Commission requires applications for equipment certification to be filed electronically, but provides a waiver process for manual filing. In the five years that this rule has been in place, we have not received any waivers requests. Thus we propose to delete the provisions for a paper filing of an application for Certification.

19. *Section 2.926(c) FCC Identifier, Grantee Code.* The FCC Identifier listed on equipment authorizations issued by the Commission consists of a grantee code assigned by the Commission and an equipment product code assigned by the grantee. Section 2.926(c) permits applicants to submit a written request for assignment of a grantee code. We propose to modify this section of the rules to require electronic filing for all grantee code assignment requests.

20. *Section 2.929(c) and (d) Changes in name, address, ownership or control of grantee.* The current rules require the grantee of an equipment authorization to supply the Commission with a written notification whenever a change in name, address, ownership, or control of grantee occurs. We believe that notification can be accomplished faster and more efficiently electronically. Therefore, we propose to modify these sections of the Rules to require electronic filing for all changes in address, company name, contact person, and control/sale of the grantee.

21. *Accreditation of Test Laboratories. Section 2.948 Description of Measurement Facilities.* Currently the Commission's rules do not address re-evaluation intervals for laboratories that submit part 15 and part 18 test data for certification. Accrediting bodies that evaluate the laboratories generally determine these intervals themselves. While domestic laboratories are generally re-evaluated at two-year intervals, some Accrediting Bodies reassess foreign laboratories only every 7 years. We believe that it is important that all laboratories, both foreign and domestic, be re-certified on a common interval. Accordingly, we propose to clarify that all test sites, both foreign and domestic, must be reassessed by their Accrediting Body every two years.

22. *Section 2.962 Requirements for a Telecommunication Certification Body.* Section 2.962(e)(1) states that the Commission will designate as a Telecommunications Certification Body any organization that meets the qualification criteria and is accredited by NIST or its recognized accreditor. The rule section does not place requirements on re-accreditation periods. We believe that it is important that Telecommunications Certification Bodies are routinely re-accredited to ensure continued compliance with applicable standards. Accordingly, in this section, we propose to clarify that every Telecommunications Certification Body must be re-accredited every 2 years for continued accreditation.

Initial Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 62 of the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2]

A. Need for, and Objectives of, the Proposed Rules

24. Section 11 of the Communications Act of 1934, as amended, and section 202(h) of the Telecommunications Act of 1996 require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

25. On September 6, 2002, the Commission released a *Public Notice* seeking comments regarding Commission rules which may be outdated and in need of revision.[3] The *Public Notice* identified a number of rule sections in parts 2 and 15 as candidates for review, and encouraged interested parties to provide comment on these rules. Subsequently, on September 26, 2002, the Commission released a separate *Public Notice* seeking suggestions as to which rule

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–112, 110 Stat. 847 (1996)(CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 603(a).

[3] *See* Public Notice, ''FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under The Regulatory Flexibility Act, 5 U.S.C. 610,'' released September 6, 2002, DA 02–2152.

parts administered by the Commission's Office of Engineering and Technology should be modified or repealed as part of the 2002 biennial review.[4] Some of the comments filed in response to these *Public Notices* are addressed by the NPRM. The NPRM also addresses other issues raised as a result of recent changes in technology.

26. The NPRM proposes several changes to parts 2, 15 and other parts of the rules. Specifically, it proposes to:

(1) Modify the rules to permit the use of advanced antenna technologies with spread spectrum devices in the 2.4 GHz band;

(2) Modify the replacement antenna restriction for part 15 devices;

(3) Modify the equipment authorization procedures to provide more flexibility to configure transmission systems without the need to obtain separate authorization for every combination of system components;

(4) Harmonize the measurement procedures for digital modulation systems authorized pursuant to § 15.247 of the rules with those for similar U–NII devices authorized under §§ 15.401–15.407 of the rules;[5]

(5) Modify the channel spacing requirements for frequency hopping spread spectrum devices in the 2.4 GHz band in order to remove barriers to the introduction of new technology that uses wider bandwidths;

(6) Clarify the equipment authorization requirements for modular transmitters; and

(7) Make other changes to update or correct parts 2 and 15 of our rules.

27. These proposals, if adopted, will prove beneficial to manufacturers and users of unlicensed technology, including those who provide services to rural communities. Specifically, we note that a growing number of service providers are using unlicensed devices within wireless networks to serve the varied needs of industry, government, and general consumers alike. One of the more interesting developments is the emergence of wireless Internet service providers or ''WISPs.'' Using unlicensed devices, WISPs around the country are providing an alternative high-speed connection in areas where cable or DSL services have been slow to arrive. We believe that the increased flexibility proposed herein will help to foster a viable last mile solution for delivering Internet services, other data applications, or even video and voice services to underserved, rural, or isolated communities.

B. Legal Basis

28. The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

29. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[6] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act.[7] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets many additional criteria established by the Small Business Administration (SBA).[8]

30. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[9] Nationwide, as of 1992, there were approximately 275,801 small organizations.[10] The term ''small governmental jurisdiction'' is defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[11] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[12] This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small governmental jurisdictions is approximately 75,955 or fewer.

31. The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, we will utilize the SBA definition application to manufacturers of Radio and Television Broadcasting and Communications Equipment. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[13] Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[14] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. Part 15 transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. *See* 47 CFR 15.101, 15.201, 15.305, and 15.405. The changes proposed in this proceeding would not change any of the current reporting or recordkeeping requirements. Further, the proposed regulations add permissible measurement techniques and methods of operation. The proposals would not require the modification of any existing products.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include

[4] *See* Public Notice, ''The Commission Seeks Public Comment in the 2002 Biennial Review of Telecommunications Regulations within the Purview of the Office of Engineering and Technology,'' released September 26, 2002, ET Docket No. 02–312.

[5] 47 CFR 15.247.

[6] *See* U.S.C. 603(b)(3).

[7] Id. 601(3).

[8] *Id.* 632.

[9] 5 U.S.C. 601(4).

[10] 1992 Economic Census, U.S. Bureau of the Census, , Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[11] 5 U.S.C. 601(5).

[12] 1995 Census of Governments, U.S. Census Bureau, United States Department of Commerce, Statistical Abstract of the United States (2000).

[13] 13 CFR 121.201, NAICS code 334220.

[14] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

34. At this time, the Commission does not believe the proposals contained in this NPRM will have a significant economic impact on small entities. The NPRM does not propose new device design standards. Instead, it relaxes the rules with respect to the types of devices which are allowed to operate pursuant to the Commission's regulations. There is no burden of compliance with the proposed changes. Manufacturers may continue to produce devices which comply with the former rules and, if desired, design devices to comply with the new regulations. The proposed rules will apply equally to large and small entities. Therefore, there is no inequitable impact on small entities. Finally, this notice does not recommend a deadline for implementation. We believe that the proposals are relatively simple and do not require a transition period to implement. An entity desiring to take advantage of the relaxed regulations may do so at any time.

35. Unless our views are altered by comments, we find that the proposed rule changes contained in this NPRM will not present a significant economic burden to small entities. Therefore it is not necessary at this time to propose alternative rules. Notwithstanding our finding, we request comment on alternatives that might minimize the amount of adverse economic impact, if any, on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

36. None.

Ordering Clauses

37. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 USC 154(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307, the Notice of Proposed Rule Making is adopted.

38. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Communications equipment.

47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 15 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303 and 336, unless otherwise noted.

2. Section 2.913 is revised to read as follows:

§ 2.913 Submittal of equipment authorization application or information to the Commission.

(a) All applications for equipment authorization must be filed electronically via the Internet. Information on the procedures for electronically filing equipment authorization applications can be obtained from the address in paragraph (c) of this section and from the Internet.

(b) Unless otherwise directed, fees for applications for the equipment authorization, pursuant to § 1.1103 of this chapter, must be submitted either electronically via the Internet or by following the procedures described in § 0.401(b) of this chapter. The address for fees submitted by mail is: Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315. If the applicant chooses to make use of an air courier/package delivery service, the following address must appear on the outside of the package/envelope: Federal Communications Commission, c/o Mellon Bank, Mellon Client, Service Center, 500 Ross Street—Room 670, Pittsburgh, PA 15262–0001.

(c) Any equipment samples requested by the Commission pursuant to the provisions of subpart J of this part shall, unless otherwise directed, be submitted to the Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, Maryland, 21046.

3. Section 2.926 is amended by revising paragraph (c) to read as follows:

§ 2.926 FCC identifier.

* * * * *

(c) A grantee code will have three characters consisting of Arabic numerals, capital letters, or combination thereof. A prospective grantee or his authorized representative may receive a grantee code electronically via the Internet. The code may be obtained at any time prior to submittal of the application for equipment authorization. However, the fee required by § 1.1103 of this chapter must be submitted and validated within 30 days of the issuance of the grantee code, or the code will be removed from the Commission's records and a new grantee code will have to be obtained.

* * * * *

4. Section 2.929 is amended by revising paragraphs (c) and (d) to read as follows:

§ 2.929 Changes in name, address, ownership or control of grantee.

* * * * *

(c) Whenever there is a change in the name and/or address of the grantee of an equipment authorization, notice of such change(s) shall be submitted to the Commission via the Internet within 30 days after the grantee starts using the new name and/or address.

(d) In the case of transactions affecting the grantee, such as a transfer of control or sale to another company, mergers, or transfer of manufacturing rights, notice must be given to the Commission via the Internet within 60 days after the consummation of the transaction. Depending on the circumstances in each case, the Commission may require new applications for equipment authorization. In reaching a decision the Commission will consider whether the acquiring party can adequately ensure and accept responsibility for continued compliance with the regulations. In general, new applications for each device will not be required. A single application for equipment authorization may be filed covering all the affected equipment.

5. Section 2.948 is amended by revising paragraph (d) introductory text and removing paragraph (d)(3) to read as follows:

§ 2.948 Description of measurement facilities.

* * * * *

(d) A laboratory that has been accredited with a scope covering the required measurements shall be deemed competent to test and submit test data for equipment subject to verification,

Declaration of Conformity, and certification. Such a laboratory shall be accredited by an approved accreditation organization based on the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Standard 17025, ''General Requirements for the Competence of Calibration and Testing Laboratories.'' The organization accrediting the laboratory must be approved by the Commission's Office of Engineering and Technology, as indicated in § 0.241 of this chapter, to perform such accreditation based on ISO/IEC 58, ''Calibration and Testing Laboratory Accreditation Systems—General Requirements for Operation and Recognition.'' The frequency for revalidation of the test site and the information that is required to be filed, or retained by the testing party shall comply with the requirements established by the accrediting organization. However, in all cases, test site revalidation shall occur on an interval not to exceed two years.

* * * * *

6. Section 2.962 is amended by revising paragraphs (c)(4), (e) introductory text, (f)(1), (f)(3), (g)(3) and by adding paragraph (c)(7) to read as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.

* * * * *

(c) * * *

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel shall demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the Telecommunication Certification Body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations, as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65, shall be taken into consideration.

* * * * *

(7) A Telecommunication Certification Body shall be reassessed for continued accreditation on intervals not exceeding two years.

* * * * *

(e) Designation of a TCB. * * *

* * * * *

(f) * * *

(1) A TCB shall certify equipment in accordance with the Commission's rules and policies.

* * * * *

(3) A TCB may establish and assess fees for processing certification applications and other tasks as required by the Commission.

* * * * *

(g) * * *

(3) If during post market surveillance of a certified product, a Telecommunication Certification Body determines that a product fails to comply with the applicable technical regulations, the Telecommunication Certification Body shall immediately notify the grantee and the Commission. A follow-up report shall also be provided within thirty days of the action taken by the grantee to correct the situation.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

7. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

§ 15.7 [Removed]

8. Section 15.7 is removed.

9. Section 15.203 is revised to read as follows:

§ 15.203 Antenna requirement.

(a) An intentional radiator shall be designed to ensure that no antenna other than that certificated with the device may be used. The use of a permanently attached antenna or of an antenna that uses a unique coupling to the intentional radiator shall be considered sufficient to comply with the provisions of this section. The manufacturer may design the unit so that a broken antenna can be replaced by the user, but the use of a standard antenna jack or electrical connector is prohibited. This requirement does not apply to carrier current devices or to devices operated under the provisions of §§ 15.211, 15.213, 15.217, 15.219, or 15.221. Further, this requirement does not apply to intentional radiators that must be professionally installed, such as perimeter protection systems and some field disturbance sensors, or to other intentional radiators which, in accordance with § 15.31(d), must be measured at the installation site. However, the installer shall be responsible for ensuring that the proper antenna is employed so that the limits in this part are not exceeded.

(b) Intentional radiators may be certificated with multiple antenna types. Manufacturers must supply a list of acceptable antenna types with applications for equipment authorization. Compliance testing must be performed using the highest gain antenna of each type of antenna to be certified and with the transmitter operating at its maximum output power. Any antenna meeting the specifications of tested antennas can be used with the device without retesting. Use of an antenna of a different type than the tested antenna, one that exceeds the gain of a tested antenna, or one that does not meet the tested antenna specifications will require retesting and new approval by either a TCB or the Commission.

10. Section 15.204 is amended by adding paragraphs (b)(1), (b)(2) and (b)(3) and by revising paragraph (c) to read as follows:

§ 15.204 External radio frequency power amplifiers and antenna modifications.

* * * * *

(b) * * *

(1) A transmission system consisting of an intentional radiator, an external radio frequency power amplifier, and an antenna, may be authorized, marketed and used under this part. However, when a transmission system is authorized as a system, it must always be marketed as a complete system and must always be used in the configuration in which it was authorized. Except as described in paragraph (b)(3) of this section, an external radio frequency power amplifier shall be marketed only in the system configuration with which the amplifier is authorized and shall not be marketed as a separate product.

(2) Professional radio system installers and parties that offer commercial radio services may substitute technically equivalent components, including external radio frequency power amplifiers and/or antennas, in systems that have been granted prior equipment authorization. The professional installer or commercial service provider must place a label on the transmission system that lists the FCC Identification Number of the system that was granted equipment authorization, identifies any components that were substituted, and designates a point of contact for the party that installed the system.

(3) An external radio frequency power amplifier may be marketed for individual sale provided it is intended for use in conjunction with a transmitter that operates in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands pursuant to § 15.247 or a transmitter that operates in the 5.725–

5.825 GHz band pursuant to § 15.407. The output power of such an amplifier must not exceed the maximum permitted output power of its associated transmitter.

(c) Except as otherwise described in paragraph (b) of this section, only the antenna with which an intentional radiator is authorized may be used with the intentional radiator.

11. Section 15.212 is added to read as follows:

§ 15.212 Modular transmitters.

(a) The radio elements of the modular transmitter must have its own shielding. If the modular transmitter consists of two or more partitioned sections, the interface between the sections of the modular system must be digital with a minimum signaling amplitude of 150 mV peak-to-peak. The physical crystal and tuning capacitors for partitioned modules can be located external to the shielded radio elements.

(b) The modular transmitter must have buffered modulation/data inputs (if such inputs are provided) to ensure that the module will comply with part 15 requirements under conditions of excessive data rates or over-modulation. For partitioned modules, control information and other data may be exchanged between the firmware and radio front end.

(c) The modular transmitter must have its own power supply regulation.

(d) The modular transmitter must comply with the antenna requirements of §§ 15.203 and 15.204(c). The antenna must either be permanently attached or employ a ''unique'' antenna coupler (at all connections between the module and the antenna, including the cable). Any antenna used with the module must be approved with the module, either at the time of initial authorization or through a Class II permissive change. The ''professional installation'' provision of § 15.203 may not be applied to modules.

(e)(1) The modular transmitter must be tested in a stand-alone configuration, *i.e.*, the module must not be inside another device during testing. Unless the transmitter module will be battery powered, it must comply with the AC line conducted requirements found in § 15.207. AC or DC power lines and data input/output lines connected to the module must not contain ferrites, unless they will be marketed with the module (*see* § 15.27(a)). The length of these lines used during testing shall be a length typical of actual use or, if that length is unknown, at least 10 centimeters to insure that there is no coupling between the case of the module and supporting test equipment. Any accessories, peripherals, or support equipment connected to the module during testing shall be unmodified or commercially available (*see* § 15.31(i)).

(2) A module comprised of two or more sections shall be tested installed on a reference platform or final host device. Signal injection testing shall be performed on the implementation with a length of cable not exceeding ten centimeters connecting the module components and platform.

(f) The modular transmitter must be labeled with its own FCC ID number, and, if the FCC ID is not visible when the module is installed inside another device, then the outside of the device into which the module is installed must also display a label referring to the enclosed module. This exterior label can use wording such as the following: ''Contains Transmitter Module FCC ID: XYZMODEL1'' or ''Contains FCC ID: XYZMODEL1.'' Any similar wording that expresses the same meaning may be used. The Grantee may either provide such a label, an example of which must be included in the application for equipment authorization, or, must provide adequate instructions to parties that may include the module in their product that such a label must be placed on the outside of the device. In the latter case, a copy of these instructions must be included in the application for equipment authorization.

(g) The modular transmitter must comply with any specific rule or operating requirements applicable to the transmitter and the manufacturer must provide adequate instructions along with the module to explain any such requirements. A copy of these instructions must be included in the application for equipment authorization.

(h) The modular transmitter must comply with any applicable RF exposure requirements.

(i) The type number of a partitioned module will consist of a digital word 4 bytes in length with the following bit definition: 16 bits for the company information, 16 bits for the Device Number.

12. Section 15.247 is amended by revising paragraph (a)(1) introductory text and by adding paragraphs (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11) and (e) to read as follows:

§ 15.247 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz.

(a) * * *

(1) Frequency hopping systems shall have hopping channel carrier frequencies separated by a minimum of 25 kHz or the 20 dB bandwidth of the hopping channel, whichever is greater. Frequency hopping systems in the 2.4 GHz band may have hopping channel carrier frequencies separated by 25 kHz or two-thirds of the 20 dB bandwidth of the hopping channel, whichever is greater, provided the systems employ fewer than 75 hopping channels and operate with an output power no greater than 125 mW. The system shall hop to channel frequencies that are selected at the system hopping rate from a pseudorandomly ordered list of hopping frequencies. Each frequency must be used equally on the average by each transmitter. The system receivers shall have input bandwidths that match the hopping channel bandwidths of their corresponding transmitters and shall shift frequencies in synchronization with the transmitted signals.

* * * * *

(b) * * *

(6) A device that operates in the 2.4 GHz band and transmits to multiple receivers (simultaneously or sequentially) will be permitted to operate at point-to-point power levels if it satisfies both of the following conditions:

(i) It must form multiple directional beams (simultaneously or sequentially) for the purpose of focusing energy on different receivers or groups of receivers.

(ii) It must transmit different information to each receiver.

(7) For devices qualifying as point-to-point under this interpretation, total RF power supplied to the array or arrays that comprise the device (*i.e.*, sum of power supplied to all antennas, antenna elements, staves, etc. and summed across all carriers or frequency channels) is limited as follows:

(i) Total power is limited to the applicable power level as specified in paragraph (b)(1) or (b)(3) of this section.

(ii) Total power must be reduced by 1 dB for each 3 dB of directional gain above 6 dB of the antenna/array device, as defined in paragraph (b)(9) of this section.

(8) The power limits specified previously will be applied to the aggregate power of all simultaneously operated frequency channels and directional beams, except that, for devices that transmit on multiple beams simultaneously (on the same or different frequency channels), a higher total power level may be allowed. For such devices, both of the following power limits must be satisfied.

(i) The power supplied to each beam will be subject to the power limit as specified in paragraph (b)(7)(i) of this section.

(ii) Aggregate power transmitted simultaneously on all beams must not

exceed the power limit determined in paragraph (b)(7)(i) of this section by more than 8 dB.

(9) Directional gain shall be computed as follows:

(i) Directional gain will be assumed to be equal to the sum of 10 log (# of array elements or staves) and the directional gain of the individual elements or staves (or of the element or stave having the highest gain if all are not the same).

(ii) A value for directional gain less than that given by (b)(9)(i) of this section will be accepted only if sufficient evidence is presented that the directional gain cannot exceed the proposed value (for example due to shading of the array, or coherence loss in the beamforming).

(10) If a device transmits in only single sector (single directional beam), then it does not satisfy the conditions of paragraph (b)(6) of this section and must be evaluated under point-to-multipoint rules.

(11) If a device transmits in multiple sectors (multiple beams pointed in different directions) and satisfies the conditions of paragraph (b)(6)(i) of this section, then the device may operate at point-to-point power levels computed according to paragraphs (b)(7) and (b)(8) of this section. Power in each sector must satisfy the limit in paragraph (b)(7)(i) of this section, and total RF power supplied to all antennas (all sectors) simultaneously must satisfy the limit in (b)(8)(ii) of this section.

* * * * *

(e) The peak output power and peak power spectral density for digitally modulated system may be determined in accordance with the provisions specified in §§ 15.407(a)(4) and 15.407(a)(5).

* * * * *

[FR Doc. 03–30540 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 03–284]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document initiates an examination of how to facilitate wireless-to-wireline porting in cases where the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer. In addition, this document examines whether to reduce the duration of the porting interval for ports between wireless and wireline carriers.

DATES: Comments are due on or before December 30, 2003, and reply comments are due on or before January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Attorney, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission Further Notice of Proposed Rulemaking, (FNPRM) released November 10, 2003 (FCC 03–284). The full text of the FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th St., SW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.* Additionally, the complete item is available on the Commission's web site at *http://www.fcc.gov/wtb.*

Synopsis of the FNPRM

1. In the FNPRM, the Commission seeks comment on how to facilitate wireless-to-wireline porting in cases where the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer. Specifically, the Commission seeks comment on technical impediments associated with requiring wireless-to-wireline number portability when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. In addition to technical factors, the Commission seeks comment on whether there are regulatory requirements that prevent wireline carriers from porting wireless numbers when the rate center associated with the number and the customer's physical location do not match.

2. Next, the FNPRM seeks comment on whether to reduce the current wireline four business-day porting interval for intermodal porting. Particularly, the Commission seeks comment on whether there are practical or technical impediments to requiring wireline carriers to achieve a reduced porting interval for intermodal ports. The Commission seeks comment on an appropriate transition period in the event a shorter porting interval is adopted, during which time carriers can modify and test their systems and procedures.

Administrative Matters

Initial Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the FNPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. This is a summary of the full text of the IRFA. The full text of the IRFA may be found at Appendix B of the full text of the FNPRM. The Commission will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for, and Objectives of, the Proposed Rules

4. The FNPRM seeks comment on how to facilitate wireless-to-wireline porting where the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer do not match. The FNPRM also seeks comment on whether the Commission should reduce the current four-business day porting interval for intermodal porting.

B. Legal Basis for Proposed Rules

5. The proposed action is authorized under § 52.23 of the Commission's rules, 47 CFR 52.23, and in sections 1, 3, 4(i), 201, 202, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154(i), 201–202, and 251.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small business Act, a ''small business concern'' is one that: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any

additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

7. Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers LECs in the RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in the RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts. According to the FCC's *Telephone Trends Report* data, 1,337 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees.

8. Competitive Local Exchange Carriers. Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.

9. Wireless Service Providers. The SBA has developed a size standard for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 719 companies reported that they were engaged in the provision of wireless telephony. Of these 719 companies, an estimated 294 have 1,500 or fewer employees and 425 have more than 1,500 employees.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. To address concerns regarding wireline carriers' ability to compete for wireless customers through porting, future rules may change wireline porting guidelines. In addition, future rules may require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. These potential changes may impose new obligations and costs on carriers. Commenters should discuss whether such changes would pose an unreasonable burden on any group of carriers, including small entity carriers.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

12. The FNPRM reflects the Commission's concern about the implications of its regulatory requirements on small entities. Particularly, the FNPRM seeks comment on the concern that wireline carriers, including small wireline carriers, have expressed that permitting wireless carriers to port numbers wherever their rate center overlaps the rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers. Wireline carriers contend that while permitting porting outside of wireline rate center boundaries may facilitate widespread wireline-to-wireless porting, wireless-to-wireline porting can only occur in cases where the wireless customer is physically located in the wireline rate center associated with the phone number. If the customer's physical location is outside the rate center associated with the number, porting the number to a wireline telephone at the customer's location could result in calls to and from that number being rated as toll calls. As a result, LECs assert, they are effectively precluded from offering wireless-to-wireline porting to those wireless subscribers who are not located in the wireline rate center associated with their wireless numbers.

13. The FNPRM seeks comment on how to facilitate wireless-to-wireline porting when the location of the wireline facilities serving the customer requesting the port is not in the rate center where the wireless number is assigned. The FNPRM seeks comment on whether there are technical or regulatory obstacles that prevent wireline carriers from porting-in wireless numbers when the rate center associated with the number and the customer's physical location do not match. The FNPRM asks commenters that contend that such obstacles exist and result in a competitive disadvantage to submit proposals to mitigate these obstacles.

14. In addition, the FNPRM seeks comment on alternative methods to facilitate wireless-to-wireline porting. To the extent that wireless-to-wireline porting may raise issues regarding the rating of calls to and from the ported number when the rate center of the ported number and the physical location of the customer do not match, the FNPRM seeks comment on the extent to which wireline carriers should absorb the cost of allowing the customers with a number ported from a wireless carrier to maintain the same local calling area that the customer had with the wireless service provider. Alternatively, the FNPRM seeks comment about whether wireline carriers may serve customers with numbers ported from wireless carriers on a Foreign Exchange (FX) or Virtual FX basis. The FNPRM seeks comment on the procedural, technical, and regulatory implications of each of these approaches. These questions provide an excellent opportunity for small entity commenters and others concerned with small entity issues to describe their concerns and propose alternative approaches.

15. The FNPRM also seeks comment about whether the Commission should require wireline carriers to reduce the length of the current wireline porting interval for ports to wireless carriers. The FNPRM analyzes the current wireline porting interval and seeks comment about whether there are technical or practical impediments to requiring wireline carriers to achieve shorter porting intervals for intermodal porting. The FNPRM recognizes that, if a reduced porting interval was adopted, carriers may need additional time to modify and test their systems and

procedures. Accordingly, the FNPRM seeks comment on an appropriate transition period in the event a shorter porting interval is adopted.

16. Throughout the FNPRM the Commission emphasizes in its request for comment, the individual impacts on carriers as well as the critical competition goals at the core of this proceeding. The Commission will consider all of the alternatives contained not only in the FNPRM, but also in the resultant comments, particularly those relating to minimizing the effect on small businesses.

F. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

17. None.

Ex Parte Presentations

18. This is a ''permit but disclose'' proceeding pursuant to § 1.1206 of the Commission's rules. Ex parte presentations that are made with respect to the issues involved in the Petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's rules.

19. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html.*

20. Parties who choose to file by paper must file an original and four copies of each filing. Each filing should include the applicable docket number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

21. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered diskette filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to: 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

22. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426 (voice) or (202) 418–7365 (TTY), or at *bmillin@fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30542 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3746; MB Docket No. 03–175; RM–10719]

Radio Broadcasting Services; Rising Star, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: In this document, the Commission dismisses a petition for rule making filed by Charles Crawford (''Petitioner''), requesting the allotment of Channel 290C3 at Rising Star, Texas. *See* 68 FR 47283, August 8, 2003. Petitioner's comments were late-filed with no request to accept on a late-filed basis. Although timely filed, a counterproposal filed by Katherine Pyeatt was dismissed as unacceptable due to a short spacing to a licensed station. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–175, adopted November 21, 2003, and released November 26, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Natek, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30544 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224, and 660

[Docket No. 031125294–3294–01; I.D. 102903C]

RIN 0648–AP42

Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP), which was submitted by the Pacific Fishery Management Council (Pacific Council) for review and approval by the Secretary of Commerce.

DATES: Comments must be received by January 26, 2004.

ADDRESSES: Comments should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Copies of the FMP, environmental impact statement (EIS), regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) may be obtained from Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Svein Fougner, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and by e-mail to *David__Rostker@omb.eop.gov*, or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, NMFS, at 562–980–4040.

SUPPLEMENTARY INFORMATION: The Pacific Council prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* On January 18, 2002, a notice of availability of a Draft Environmental Impact Statement for the FMP was published in the **Federal Register** (67 FR 2651). The Pacific Council held 7 public hearings on the FMP from January 28, 2002, to February 4, 2002, in the States of Washington, Oregon, and California. At its March 2002 meeting in Sacramento, CA, the Pacific Council reviewed public comments received at the hearings, considered written and oral comments, and adopted preliminary preferred alternatives for some issues, leaving its decision on other alternatives for a future meeting. At its October-November 2002 meeting in Foster City, CA, the Pacific Council adopted all of its preferred alternatives and voted to submit the FMP for Secretarial review.

Among the preferred alternatives was a provision to allow longline fishing targeting swordfish east of 150° W. longitude (long.). Before the final FMP document was submitted, however, NMFS informed the Pacific Council at its March 2003 meeting in Sacramento, CA about potential impacts of the fishery under the preferred alternative on endangered sea turtles. NMFS asked the Pacific Council to delay submission of the FMP to provide time for a rigorous scientific analysis of recently collected observer data, and review of the results by the Pacific Council and its advisory bodies, prior to final completion and submission of the FMP. Those data indicated that take rates of sea turtles in the longline fishery in the eastern Pacific were similar to those in the western Pacific, and if those rates were representative of what could be expected in the fishery, there could be excessive sea turtle takes under the Pacific Council's preferred alternative. At the Pacific Council's June 2003 meeting in Foster City, CA, NMFS presented reports on the catch rates of turtles in the longline fishery and the results of the scientific analysis of the data. NMFS informed the Pacific Council that allowing longline fishing targeting swordfish east of 150° W. long. may not provide sufficient protection to endangered and threatened sea turtles. Therefore, this alternative might not be approved. The Pacific Council then heard reports from its advisory bodies and public comments and concluded that the FMP should be submitted without changing any of its preferred alternatives. The Pacific Council then completed the final FMP and submitted it for Secretarial review. A Notice of Availability of the FMP was published in the **Federal Register** at 68 FR 62763, November 6, 2003.

The FMP that would be implemented by this proposed rule is intended to address concerns about the effect of fishing on highly migratory species (HMS) off the U.S. West Coast and on ocean resources caught incidentally to fishing for HMS. The fish species included in the management unit are tuna (yellowfin, bigeye, skipjack, albacore, and northern bluefin), billfish (striped marlin and swordfish), oceanic sharks (common thresher, bigeye thresher, pelagic thresher, shortfin mako, blue), and dorado (also commonly known as mahi mahi and dolphinfish). Other species ranging throughout the Pacific Ocean throughout the Pacific are taken incidental to fishing for HMS but are not in the management unit. A significant amount of information exists on some species, such as some of the tunas, but comprehensive stock assessments are needed for many species, which are harvested by numerous coastal and distant-water fishing nations throughout the Pacific. United States fishermen fish HMS in the U.S. exclusive economic zone (U.S. EEZ), in the exclusive economic zones of other nations, and on the high seas.

Marine mammals, sea turtles, and sea birds also are occasionally caught incidental to fishing for HMS by some gear types. The effect on such species of takes by fishing gear is a problem throughout the Pacific Ocean, and the United States has in many cases already taken action under the authority of the Magnuson-Stevens Act, the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) to minimize or mitigate the impact of U.S. fisheries on these resources. The FMP would provide additional protective measures for West Coast HMS fisheries.

The FMP, if approved, would directly impose certain conservation and management measures on the fisheries as well as provide a procedural framework for future management actions that might be necessary as the international and U.S. fisheries change.

Management Unit Species

The FMP is intended to ensure conservation and promote the achievement of optimum yield of those HMS that are defined as management unit species in the FMP. The FMP is designed to conserve HMS throughout their individual ranges, both within and beyond the U.S. EEZ to the extent practicable, recognizing that management authority of all species falls within many jurisdictions. The Pacific Council reviewed 6 alternatives for designating management unit species. As indicated, the proposed species to be managed are striped marlin and swordfish; common, pelagic, and bigeye thresher shark, shortfin mako (bonito) shark), and blue shark; north Pacific albacore, yellowfin, bigeye, skipjack, and northern bluefin

tuna; and dorado. Other groupings of species (e.g., excluding dorado or excluding bigeye and pelagic thresher sharks) are included in the FMP as alternatives to the preferred alternative, and public comment is sought on what species should be in the management unit.

Tuna

Some tuna species are highly productive and are harvested by fishing fleets of many countries. For example, yellowfin and bigeye tuna are harvested by the United States, Mexico, Costa Rica, and other coastal states in Central and South America. Harvest limits for yellowfin and bigeye tuna in the eastern Pacific are set by the Inter-American Tropical Tuna Commission (IATTC) and not by NMFS through the FMP. However, the decisions made by the IATTC regarding harvest limits and the basis for those decisions would be available to the Pacific Council for its review. Opinions of the Pacific Council on international management would be forwarded to the U.S. State Department through NMFS. If allocations among U.S. fishermen became necessary as a result of decisions by the IATTC, the Pacific Council would be the body with the responsibility to make recommendations to NMFS regarding implementation. A similar arrangement would be utilized by NMFS for any fishery in which an international organization is involved. No harvest limits for bluefin tuna, skipjack tuna, or north Pacific albacore are proposed by the FMP at this time, although a maximum sustainable yield for each species of tuna is contained in the FMP. Unilateral harvest limits for these species would have no practical effect, given the international nature of the fisheries for these species and the low portion of total catches for which the U.S. fleet is responsible in most cases. However, if international action to limit harvests is agreed to, then the Pacific Council may play a role in implementing such limits with respect to U.S. fisheries.

Sharks

Most sharks are less productive than other HMS and are vulnerable to overfishing. Although shark species included in the management unit range throughout the Pacific Ocean and are not being overfished, the FMP proposes to adopt harvest limits off the Pacific coast for common thresher of 340 metric tons (mt) and shortfin mako of 150 mt to prevent local depletion. The thresher shark harvest guideline is lower than the recommended harvest limit set in the tri-state fishery management plan for this species developed by the States of California, Oregon, and Washington. The justification for a more conservative approach in the FMP is the result of an analysis of historical harvests explained in Chapter 3 of the FMP, which contains an estimate of a local maximum sustainable yield that is less than that contained in the tri-state plan. No harvest limit is proposed for pelagic thresher shark, bigeye thresher shark or blue shark. Public comment is sought on this approach and whether harvest limits should be placed on other species.

Other Species

No harvest limits are proposed for striped marlin, dorado, or swordfish. Again, unilateral limits for U.S. fisheries would have no beneficial effect, given the international nature of the fisheries and the small share of total catch made by U.S. vessels. Like many HMS, striped marlin off the Pacific coast is at the northern limit of its range off California. The sale of striped marlin would be prohibited to prevent commercial targeting of this species, which has such high value for recreational fisheries. This species has been a target of recreational fisheries for decades. The proposed limit on the sale of marlin contained in the FMP continues a prohibition that has been in California law since the 1930s.

Fishing Gear Employed

HMS are harvested off the West Coast by five commercial gear groups and various recreational fisheries. Under the FMP, the authorized commercial gears are surface hook-and-line, drift gillnet, longline, purse seine, and harpoon. Recreational anglers would be allowed to pursue HMS from commercial passenger fishing vessels and from private boats with hook-and-line gear.

The definition of fishing gear is important because gear not defined in regulations implementing the FMP would not be legal gear. For example, mousetrap gear, which is a free floating hook-and-line gear, is not defined in this proposed rule and would not be legal. Likewise, if a drift gillnet is defined as having a mesh size of at least 14 inches (35.56 cm), which is the proposed action in the FMP, any net with a smaller mesh size would not be legal and could not be fished from Pacific coast ports for HMS. This issue is discussed in section 9.2.4.1 of the FMP and in Major Issues below.

Major Issues

1. Management of Longline Fishery

The preferred alternative with regard to longline fishing is to (1) prohibit longline fishing in the U.S. EEZ; (2) adopt, for longline vessels fishing west of 150° W. long., all of the restrictions that apply to longline vessels fishing with a limited entry permit under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP); and (3) adopt, for longline vessels fishing outside the U.S. EEZ and east of 150° W. long., the same restrictions as those that apply to longline vessels fishing with a limited entry permit under the Pelagics FMP, except that the restrictions that prevent shallow sets for swordfish would not apply.

The restrictions preventing shallow sets for swordfish in the central and western Pacific were designed to reduce the impact on threatened and endangered sea turtles taken incidental to swordfish sets. After being presented with available information on the frequency of sea turtle interactions expected under different fishing scenarios, however, the Pacific Council felt that there was not sufficient information available in the eastern Pacific to justify prohibiting swordfish sets east of 150° W. long. Further, the Pacific Council concluded that it could not reasonably estimate the impacts (reduced sea turtle takes, reduced swordfish catches, etc.) if there were partial limits such as time/area closures. Therefore, the FMP proposes that longline vessels be able to target swordfish in the eastern Pacific east of 150° W. long. These vessels would have to comply with all other restrictions, including the requirements to maintain a vessel monitoring system (VMS) on board the vessel, use line clippers and dip nets for turtle release, and use seabird avoidance gear and techniques as in waters west of 150° W. long., as well as complying with the proper handling of sea turtles and seabirds.

This approach would establish consistency with regulations in waters west of 150° W. long. while minimizing the economic impact on vessels fishing from West Coast ports; however, regulations east of 150° W. long. would be different. This is a serious issue for NMFS. Based on available observer data, NMFS is concerned that allowing shallow sets for swordfish east of 150° W. long. may not comply with the ESA; therefore, this measure is at risk of not being approved.

A formal consultation under section 7 of the ESA has been initiated on the effects of the fisheries as they would

operate under the FMP. The consultation will include a review of the impact of all fishing gear regulated by the FMP, the impact of other domestic fishing fleets as they now operate, and the most recent information on the status and trends of sea turtle populations. A biological opinion will be written, and if a jeopardy conclusion is reached, a reasonable and prudent alternative will be provided to the Pacific Council that will be designed to provide sufficient protection for endangered and threatened sea turtles. Even if there is not a jeopardy conclusion, the biological opinion may include reasonable and prudent measures and conservation recommendations to reduce or mitigate sea turtle interactions. Also, an incidental take statement will be issued that may set terms and conditions on fishing to reduce or mitigate sea turtle interactions. The biological opinion will thus provide NMFS and the Pacific Council with information that could be used to develop framework measures under the FMP that would further address the impact of longline fishing on endangered and threatened sea turtles. Finally, it is noted that the observer coverage anticipated under the FMP will greatly improve the information base for future management actions.

A section 7 consultation also has been initiated concerning the potential impacts of the fisheries under the FMP on other species. The FMP requires that longline fishers use seabird avoidance gear and techniques, as is required for central and western Pacific longline fishers. This consultation is scheduled to end on the same time frame as the consultation with respect to species under NMFS jurisdiction.

2. Management of Drift Gillnet Fishing

Drift gillnet fishing is currently regulated by the states and by regulations implementing the MMPA and the ESA. The preferred alternative in the FMP is to incorporate under Magnuson-Stevens Act authority the gear and time/area closures currently in state and ESA regulations into the regulations implementing the FMP. Therefore, state area closures that extend into the U.S. EEZ are included in this proposed rule. Gear restrictions in state regulations and in NMFS regulations under the ESA to protect sea turtles are included as well. The California limited entry program for drift gillnet gear is not included in this proposed rule because the Pacific Council decided not to address overcapitalization issues at this time; however, the California limited entry program would remain in effect under State of California regulations.

Regulations establishing a Take Reduction Plan for drift gillnet vessels that includes specifications for extender lines and pingers, an acoustical device attached to the net, and skipper education workshops can be found at 50 CFR 229.30 and 229.31. These regulations would remain in effect when the FMP is implemented and would not be moved to the section of the CFR that implements the FMP. However, it is anticipated that the Pacific Council will be provided the opportunity to participate in the Take Reduction Team process to ensure that the Take Reduction Team process and recommendations and the FMP process and actions are carried out in a coordinated manner.

Endangered and threatened sea turtles are defined as fish by the Magnuson-Stevens Act. Area and seasonal closures designed to protect sea turtles in the drift gillnet fishery that are currently in effect at 50 CFR 223.206 would be moved to CFR 660 subpart K. The ESA section 7 consultations will address the impacts of drift gillnet fishing on all listed species.

The FMP defines drift gillnet gear as 14–inch (35.56–cm) stretched mesh or greater. A drift gillnet vessel with a mesh size less than 14 inches (35.56 cm) would not be able to target HMS. An incidental landing of 10 HMS per trip, other than swordfish, would be allowed to minimize bycatch of HMS while fishing for state managed species.

3. Permits

This proposed rule would require all commercial vessels fishing for HMS to obtain a permit with an endorsement for the specific gear to be used. A permit would also be required for all recreational charter vessels and commercial passenger carrying fishing vessels (CPFV) fishing for HMS. Other alternatives analyzed in the FMP include a general permit without a gear specification and a permit system that includes all recreational vessels. The purpose of a permit is to identify the vessels in the HMS fisheries so that surveys can be made when management information is required and to notify all participants of potential management actions affecting the fisheries. Permits based on gear type make surveys more efficient because landing and economic information is often needed for specific gear types. Permits would be issued to the owner of a specific vessel. Data would be maintained so that landings by the permitted vessel or by the owner of the vessel can be summarized, which would give the Pacific Council flexibility in determining qualifications for limited entry permits if the Pacific Council should decide to develop a limited entry program. No Federal limited entry program is being proposed at this time because the Pacific Council does not have sufficient information to determine the need for such a program; however, the Pacific Council has assigned its HMS Management Team to begin evaluating a limited entry program for longline vessels fishing from West Coast ports. A limited entry program would require substantial analysis and an amendment to the FMP.

Permits are currently required for vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act of 1995 and for longline vessels fishing under the authority of the Pelagics FMP. In compliance with United States obligations under the Tuna Conventions Act of 1950, NMFS is also providing information to the Inter-American Tropical Tuna Commission (IATTC) for an international vessel register including all U.S. vessels that fish tuna in the eastern Pacific Ocean. Thus, a list of vessels that would likely fall under the jurisdiction of the FMP has been completed by the Southwest Region, NMFS. The regulations propose issuing HMS permits to all individuals on this list. There would be no qualification requirements for a permit. Vessel owners who have not received a permit to harvest HMS by 60 days following the effective date of the final regulations would have to apply for an HMS permit. All vessels would need an HMS permit by January 1, 2005. There would be no cost to fishermen for this permit.

4. Recording and Recordkeeping

The proposed rule would require all commercial and recreational charter vessels and CPFV to maintain a logbook of catch and effort statistics for their HMS fishing under their permits to be submitted to the Regional Administrator following the end of a fishing trip. The proposed rule allows state logbooks to meet the Federal reporting requirement if those logbooks are submitted on time and provide the required information and if the information is available to the Regional Administrator by agreement with that state. Federal logbooks are now required for: vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act of 1995, vessels fishing tuna under the authority of the Tuna Conventions Act of 1950, and vessels fishing under the authority of the regulations implementing the Pelagics FMP. A Federal logbook for troll vessels fishing albacore, which is currently voluntary,

would be required under the FMP. The State of California requires a logbook for harpoon vessels, drift gillnet vessels, and CPFVs. The State of Oregon requires a logbook for drift gillnet vessels. These state logbooks, which are tailored to specific gear types, would be acceptable under these regulations. Duplicate logbooks would not be required.

5. Bycatch

A number of provisions are included in the FMP to measure and reduce bycatch and to provide better information to assess the amount and type of bycatch in HMS fisheries. The proposed standardized reporting system for bycatch assessment is to initially require that longline, surface hook-and-line, small purse seine fisheries, and recreational charter vessels carry observers when directed by the Regional Administrator. An observer program is already in effect for drift gillnet vessels and longline vessels, though coverage needs to be expanded for the latter. In consultation with the Pacific Council, its advisory bodies, and the fishery participants, NMFS will develop initial observer coverage plans for these fisheries, which will be completed 60 days following approval of the FMP. The observer coverage plans for these fisheries may be adjusted as the initial data is assessed and more is learned about the levels of coverage necessary to obtain statistically reliable data on bycatch in the various fisheries. In the longer term, NMFS will develop observer sampling plans for private recreational vessels to assess potential ways of improving information on managed species and on the quantity of bycatch in recreational fisheries.

The FMP identifies a variety of measures already in effect (e.g., drift gillnet mesh size, time and area closures for certain gear types) to prevent or reduce bycatch and evaluates the practicability of additional bycatch reduction measures.

6. Management Organizations

There is no single, pan-Pacific institution that manages all HMS throughout their ranges. The IATTC adopts conservation measures for yellowfin and bigeye tunas in the eastern Pacific Ocean. Member nations of the IATTC, including the United States, are obligated to implement IATTC conservation measures for their national fisheries. On September 5, 2000, the Convention on Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean was opened for signature by the coastal nations of the western and central Pacific and nations fishing in that region. The Convention has not yet entered into force and has not been ratified by the United States, but it would establish a commission empowered to adopt management measures for HMS throughout their ranges in the central and western Pacific. The IATTC and the new western Pacific commission may play important roles in managing West Coast-based HMS fisheries.

In 1981, the United States and Canada signed the Treaty on Pacific Coast Albacore Tuna Vessels and Port Privileges, which allows fishing vessels of each nation to fish for albacore tuna in waters of the other nation beyond 12 nautical miles. Recently, U.S. albacore fishermen have become concerned about the increased effort by Canadian vessels in U.S. waters and the lack of information on the amount of albacore taken by Canada. The United States engaged in negotiations with Canada on these issues, which resulted in a treaty amendment in July 2002. The United States can promulgate regulations to implement the amended treaty if the U.S. Congress enacts legislation authorizing the promulgation of regulations.

Within the United States, three regional fishery management councils have management responsibility for HMS in the Pacific Ocean: the Pacific, the North Pacific, and the Western Pacific Fishery Management Councils. The Western Pacific Fishery Management Council manages highly migratory species in the central and western Pacific under the authority of the Pelagics FMP. Many of the same stocks of HMS are harvested in separate jurisdictions. In some cases vessels are fishing in the same areas but landing in different jurisdictions, where there may be different management objectives and management measures.

Effective management of HMS in the Pacific will require the Pacific Council to be fully informed of management actions being considered in the international organizations affecting HMS and will require the Pacific Council to coordinate its activities with the Western Pacific Fishery Management Council and North Pacific Fishery Management Council. Although management objectives may differ in the respective areas, consistency is expected to be achieved by NMFS to meet the requirements of the Magnuson-Stevens Act while giving full consideration to local needs.

7. Protected Species and the Framework Process

Drift gillnet and longline vessels encounter endangered and threatened sea turtles and marine mammals during fishing operations, and longline vessels encounter significant numbers of birds. Measures to prevent jeopardy and minimize the impacts on these species have been implemented through regulations under the authority of the MMPA and the ESA. Area closures and special equipment apply to drift gillnet vessels. There is much less information about the extent or nature of interactions with sea turtles and seabirds by vessels engaged in purse seine fishing for tuna, harpoon fishing for swordfish, and trolling for albacore. However, available information indicates that interactions are very rare. The FMP mandates observer coverage to ensure a sound scientific basis for determinations of interactions and impacts and consideration of management adjustments if necessary and appropriate. It is possible that additional data will show that other fishing gear used to harvest highly migratory species has an impact in protected species. The FMP recognizes that the Pacific Council is the body best suited to weigh and consider all potential impacts on fishing for HMS from West Coast ports. The FMP includes framework procedures by which the Pacific Council can consider the need for additional actions as new information becomes available, e.g., observer data demonstrating a protected species interaction problem. The framework process explicitly includes the potential for action to conserve and protect species of special concern.

Section 118(f)(9) of the MMPA authorizes the Assistant Administrator for Fisheries (AA) to promulgate regulations governing commercial fishing operations to implement a take reduction plan to protect or restore a marine mammal stock or species. Likewise, vessels fishing for highly migratory species may have an impact on threatened or endangered species, which could require action by the Assistant Administrator under the authority of the ESA. The Pacific Offshore Cetacean Take Reduction Team established under the MMPA reviews fishery and observer data and provides guidance to NMFS on actions needed to protect marine mammals. The Southwest Regional Administrator will provide these reports to the Pacific Council for recommendations on whether and how best to implement any necessary measures. If appropriate, the Pacific Council will utilize the

framework processes in the FMP to address these issues to the extent FMP regulations are appropriate. This process does not prevent the AA from taking action under the authority of the MMPA and the ESA independent of the Pacific Council process.

The Pacific Council submitted draft regulations with the FMP as required by the Magnuson-Stevens Act. While technical changes have been made for clarity and compliance with requirements of the Office of the **Federal Register**, no substantive changes in the regulations have been made.

Classification

At this time, NMFS has not determined that the FMP this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Pacific Council prepared the FMP in the format of a final environmental impact statement (FEIS) consistent with the National Environmental Protection Act (NEPA). NOAA expects to file the FEIS with the Environmental Protection Agency after Secretarial review of the FMP has begun but before final action to approve, disapprove, or disapprove in part the FMP. The FMP contains a framework management process that facilitates timely implementation of management measures by the Pacific Council without amending the FMP. This will allow the Pacific Council and NMFS to act quickly to address resource conservation issues. Maximum sustainable yield is established for all managed species to ensure compliance with the Magnuson-Stevens Act, although some species are also managed by international organizations and come within the jurisdiction of other fishery management councils. Consistency of management to ensure effective conservation and management is a goal of the FMP. Harvest limits are established for common thresher and mako shark to prevent local depletion. Although highly migratory, evidence indicates that local depletion of these sharks can occur and would have an impact on these species and the fisheries involved. To protect endangered turtles and protected seabirds, the FMP makes regulations governing longline fishing from West Coast ports consistent with the rules established for longline vessels fishing out of Hawaii, when West Coast vessels are fishing west of 150° W. long.; therefore, all U.S. fishermen must adhere to the same conservation measures in these waters regardless of jurisdiction. However, in waters east of 150° W. long., West Coast longline vessels would not be subject to the same limitation as western Pacific vessels. The impacts of this approach, both with respect to implications for effective management and with respect to ESA issues, will be fully evaluated through the review of the FMP and the section 7 consultations described above. Rules governing drift gillnet fishing issued under the authority of the ESA are incorporated in the FMP. Incorporating rules in the FMP issued under other authorities will ensure wider public review of management issues and broader analysis. Permit and reporting requirements of the FMP build on existing programs to obtain sufficient information needed for management while minimizing duplication.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $5.0 million.

Fishing vessels targeting HMS are expected to be the only types of small entities directly impacted by the proposed actions. Any regulatory action under the FMP that would result in a reduction in domestic landings of HMS are expected to be offset at the processor level by imports at comparative prices. None of the initial regulatory alternatives considered are expected to add to the costs or reduce revenues of marinas and charter/party boats. Only the permit and logbook requirements described below would add additional reporting.

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and elsewhere in the **SUPPLEMENTARY INFORMATION** of this proposed rule and are not repeated here.

The FMP proposes management of 5 commercial fishing fleets and a fleet of recreational charter vessels. Each fleet has its own gear requirements, each has a differential impact on ocean resources, and each has different economic circumstances. The FMP authorizes commercial legal HMS gear as harpoon, surface hook and line, drift gillnet of at least 14–inch (35.56–cm) stretched mesh or greater, purse seine, and pelagic longline. The FMP authorizes rod and reel, spear, and hook and line as recreational gear. An alternative for drift gillnet gear was to allow stretched mesh less than 14 inches (35.56 cm).

The proposed alternative of requiring 14–inch (35.56–cm) stretched mesh or larger is consistent with the historic use of drift gillnet used to target swordfish and sharks. Fishermen estimated that there may be as many as 8–10 vessels that occasionally use small-mesh drift gillnets when albacore and bluefin tuna are available. There could be as many as 20 vessels that might have fished small-mesh drift gillnets at one time or another, based on landing receipts for drift gillnet vessels landing albacore and bluefin tuna, but not swordfish. Vessels fishing small mesh drift gillnet gear would be restricted to landing HMS only as an incidental catch. The economic impact on the four vessels that have been documented as using small mesh drift gillnets amounts to between 20 percent and 48 percent of gross receipts. These vessels landed between 1.0 and 15.0 mt of albacore and 0.0 to 3.0 mt of bluefin tuna during the 2001 season. The vessels might make up for the lost revenue through other small mesh gillnet fisheries or simply return to using large mesh nets because all four vessels also currently possess permits for use of the larger mesh gear. Vessels currently fishing large mesh nets would suffer no economic loss under this alternative as they would not need to modify their gear or current fishing practices. The opportunity for albacore surface hook-and-line vessels to deploy small mesh drift gillnet gear to target albacore while on overnight trips would be preempted under this alternative. Loss of this opportunity would prevent realization of potential efficiency gains from landing more albacore per unit of time on the water.

For drift gillnet vessels using nets with 14–inch (35.56–cm) or greater stretched mesh, the FMP adopts all Federal conservation and management measures in place under the MMPA and ESA; adopts all state regulations for drift gillnet fishing under Magnuson-Stevens Act authority, except the states' limited entry programs, which will remain under state authority; modifies an Oregon closure inside 1000 fathoms to be in effect year round; closes U.S. EEZ waters off Washington to all drift gillnet vessels; and includes provisions (as in current ESA regulations) to establish a turtle protection closure north of Point

Sur, CA to 45° N. lat. from August 15 to November 15, and south of Pt. Conception, CA to 120° W. long. during a forecasted or occurring El Nino event in the months of June, July, and August. Existing Federal and state regulations, including current state drift gillnet time-area closures and gear restrictions were deemed appropriate for adopting. However, the Pacific Council concluded that incorporating under MSA authority the existing state limited entry programs would significantly increase Federal costs and administrative burdens and was premature. The Pacific Council may consider limited entry under the FMP in the future and has already asked its plan team to begin consideration of limited entry for the West Coast longline fishery. Closures off Washington and Oregon are intended to protect the common thresher shark, sea turtles and marine mammals. This alternative modifies the current state regulations to prohibit, year round, drift gillnet fishing for swordfish and sharks in U.S. EEZ waters off Oregon east of a line approximating the 1,000 fm curve (deleting an existing May-August prohibition within 75 nautical miles) and prohibits drift gillnet fishing in all U.S. EEZ waters off Washington. The State of Washington currently does not allow the use of drift gillnet gear and Oregon does not allow drift gillnets to target thresher shark, although drift gillnet vessels have fished off both states and landed their catch in California.

Approximately 64 vessels actively participate in the drift gillnet fishery off the U.S. West Coast (see table below). All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no disproportionate financial impacts between small and large vessels under the proposed action.

TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR THE 64 DRIFT GILLNET VESSELS WITH LANDINGS IN 2001.

Number of Vessels	Dependence on Drift Gillnet Caught Swordfish (category of swordfish revenue/total revenue)	Average Total Ex-vessel Revenue ($/vessel)	Average Percent Drift Gillnet Swordfish (swordfish revenue/total revenue)
9	< percent	$131,171	2.07 percent
3	< 5 - 10 percent	$80,661	6.51 percent
6	> 10 - 15 percent	$204,164	12.48 percent
8	> 15 - 20 percent	$113,173	17.88 percent
8	> 20 - 25 percent	$78,063	22.43 percent
4	> 25 - 30 percent	$58,497	26.78 percent
5	> 30 - 40 percent	$88,168	37.37 percent
4	> 40 - 50 percent	$142,637	43.72 percent
5	> 50 - 60 percent	$85,076	55.02 percent
8	> 60 - 70 percent	$57,054	65.62 percent
4	> 70 percent	$3,834	87.43 percent

Financial or private costs, and measures of fishing performance are those costs and performance measures faced by individual vessel owners. Short-run, financial or private profit realized by vessel owners from participation in the swordfish/shark gillnet fishery was calculated as the difference between the annual private costs incurred during swordfish/shark fishing operations — the annual variable costs associated with swordfish/shark fishing — and the total ex-vessel revenue generated from the vessel's annual landings from swordfish/shark fishing. Only short-run measures of financial and economic performance were calculated because many vessels typically engage in other types of fishing, and there is no reasonable basis for allocating fixed and common costs across types of fishing, i.e. across drift gillnet, surface hook-and-line, or others. These are costs that do not vary with the level of fishing activity and cannot be assigned to a single type of fishing or output. Under these circumstances common or fixed costs are excluded from the short-run net benefit and financial profit calculations for each management alternative. Although drift gillnet vessels harvest a number of species and will use alternative gears, no attempt was made to evaluate potential changes in fishing strategies by these vessels in response to different opportunities to harvest HMS under each of the regulatory alternatives, and what this would mean in terms of operating costs and ex-vessel revenues under alternative fishing strategies.

Financial impacts of each drift gillnet regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between drift gillnet ex-vessel private profits under the proposed action and drift gillnet private profits under the status quo. The following table reports the estimated incremental changes in short-run financial profits for drift gillnet vessels for each regulatory alternative relative to the status quo. Financial impacts are evaluated as the present value of changes in short-run financial profits over a 25 year time period discounted at 7 percent and 4 percent discount rates. In column two, the present value of the change in average annual short-run financial profit from the status quo (from column three) is calculated for a 25–year time horizon at 7 percent and 4 percent discount rates. Column three reports the difference in estimated average annual short-run financial profit the difference between average annual exvessel revenue and average annual variable costs - under the alternative being considered and the average annual short-run financial profit under the status quo alternative. The discount rate is the rate of interest at which the cash flows associated with the proposed policy are to be discounted. The choice of discount rate reflects social time preference and the opportunity cost of resources that are used under the policy. Social time preference tends to discount the future less heavily than private time preference, while opportunity cost considerations tend to weigh against using lower discount rates for public policies for fear of preempting higher valued private use of the appropriated resources.

The estimated changes in financial profit are based on cost and earnings surveys of industry members. For the drift gillnet fishery, 42 vessel owners (about half the active fleet) responded by providing 2 years of data each. The response rate was sufficient to provide a robust analysis.

The following abbreviations are used in the tables summarizing the analyses:

NQ+ = non-quantifiable positive, NQ- = non-quantifiable negative, NC = no change from status quo, and UN = unknown and NA = not applicable.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Drift Gillnet Alternative 1: Continues the swordfish/shark DGN fishery regulations under current state and Federal authorities. (Status quo/No action)	NC	NC
Drift Gillnet Alternative 2: Differs from status quo with the imposition, on all DGN fishers, of a year round Oregon closure inside 1000 fm (or way point equivalent), elimination of the May-August closure inside 75 miles off Oregon, and the closure of U.S. EEZ waters off Washington. (Proposed Action)	NA	-$56,769
7–percent Discount Rate	-$661,557	NA
4–percent Discount Rate	-$886,843	NA
Drift Gillnet Alternative 3: Endorses or adopts only existing Federal (MMPA, ESA) DGN regulations into FMP; defers to state regulations; no difference from status quo.	NA	NC
7–percent Discount Rate	NC	NA
4–percent Discount Rate	NC	NA
Drift Gillnet Alternative 4: Endorses or adopts all Federal conservation and management measures in place under the MMPA and ESA, and adopts state regulations under MSFCMA authority, but also includes and federalizes the states' limited entry programs; differs from status quo by the impact of federalizing states' limited entry programs.	NA	UN
7–percent Discount Rate	UN	NA
4–percent Discount Rate	UN	NA
Drift Gillnet Alternative 5: Adopts turtle time/area closures per Biological Opinion, including larger area closure north of Point Conception; differs from status quo by the impact of enlarging the closed area.	NA	-$247,764
7–percent Discount Rate	-$2,887,333	NA
4–percent Discount Rate	-$9,052,347	NA
Drift Gillnet Alternative 6: Prohibits the use of drift gillnets to take swordfish and sharks in any U.S. EEZ waters less than 1000 fm off Oregon *and* Washington; differs from status quo by the impact of closing this area.[2]	NA	$310
7–percent Discount Rate	$3,617	NA
4–percent Discount Rate	$4,848	NA
Drift Gillnet Alternative 7: Drift gillnets could not be used to take swordfish and sharks in any U.S. EEZ waters north of 45° N latitude year round, including times when the northern turtle closure is not in effect (Nov 16 to Aug 14); differs from status quo by the impact of closing this area.	NA	-$8,612
7–percent Discount Rate	-$100,365	NA
4–percent Discount Rate	-$134,544	NA
Drift Gillnet Alternative 8: Drift gillnetting would be prohibited inside 75 nm off Oregon from May 1 to August 14 and inside the 1,000 fm curve the rest of the year, and U.S. EEZ waters off Washington would be closed year round to all, including Oregon- and California-based DGN fishers; differs from the status quo by the impact of the closures off Oregon and Washington to all fishers.	NA	-$56,769
7–percent Discount Rate	-$661,557	NA
4–percent Discount Rate	-$886,843	NA

The impact on drift gillnet vessels under Alternative 2, the proposed action, primarily stems from rescinding the closure of the U.S. EEZ to fishing by Oregon vessels inside 75 nautical miles off Oregon from May 1 to August 14, closing waters inside the 1,000 fathom curve off Oregon, and the entire U.S. EEZ off Washington to all fishermen year round. These closures alone reduce the discounted value of short-run financial profits available to the fleet formerly fishing in those areas by $661,557 over 25 years at a 7 percent discount rate; or $886,843 over 25 years at a 4 percent discount rate. (The data used for the financial analysis of the Oregon and Washington closures were provided by 2 fishermen out of the 2–3 active fishermen operating in these areas and covered 2 years of fishing for both respondents.)

Although the absolute level of decline in short-run financial profits from this measure is comparatively small in relation to the entire fishery, the entire burden is borne by the 2–3 vessels that currently fish both swordfish and thresher sharks, but especially the latter using drift gillnet gear in these waters. Their lost opportunity represents a decline of 51 percent in their short-run financial profits.

The FMP establishes a prohibition on the use of pelagic longline gear in the U.S. EEZ. The proposed action continues the *de facto* longline prohibition throughout the U.S. EEZ and minimizes potential bycatch of fish and protected species, and reduces fishery competition problems. There are no vessels currently participating in a pelagic longline fishery within the U.S. EEZ off the U.S. West Coast. Although Oregon is the only state that allows pelagic longlining within the U.S. EEZ on a case by case basis, no landings have occurred. All of the Oregon vessels would be considered small businesses under the SBA standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

Financial impacts of each pelagic longline regulatory alternative within the U.S. EEZ were evaluated based on

incremental changes from the status quo; i.e., the difference between pelagic longline ex-vessel private profits under the proposed action and pelagic longline private profits under the status quo. Because there are no empirical financial data available for this fishery, comparisons are based on the application of economic theory to potential fishing opportunities arising from the regulatory alternatives. The following table reports the estimated incremental qualitative changes in short-run financial profits for vessels for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Pelagic Longline w/i the U.S. EEZ Alternative 1: Current state measures would remain in place under states' authorities and there would be no new Federal regulations governing longline use in the U.S. EEZ. (Status Quo/No Action)	NC	NC
Pelagic Longline w/i the U.S. EEZ Alternative 2: Establishes a general prohibition on the use of pelagic longline gear in the U.S. EEZ. (Proposed Action)	NC	NC
Pelagic Longline w/i the U.S. EEZ Alternative 3: Prohibits longlining within the West Coast U.S. EEZ by indefinite moratorium, with the potential for re-evaluation by the Pacific Council following completion of a bycatch reduction research program with pre-established strict protocols. Must prove negligible impact on protected and bycatch species. (Ocean Wildlife Campaign Proposal)	NQ+	NQ+
Pelagic Longline w/i the U.S. EEZ Alternative 4: Authorizes a limited entry pelagic longline fishery for tunas and swordfish within the U.S. EEZ, with effort and area restrictions, to evaluate longline gear as an alternative to DGN gear to reduce bycatch or bycatch mortality and protected species interactions. (Industry Proposal)	NQ+	NQ+
Pelagic Longline w/i the U.S. EEZ Alternative 5: Prohibits longlining within the West Coast U.S. EEZ with the potential for re-evaluation by the Pacific Council following completion of a tuna-swordfish-bycatch research experiment carried out under a qualified EFP to determine if longline gear can be fished in ways that produce bycatch and protected species interaction levels that are significantly less than by drift gillnets (a=0.05). (Plan Team Proposal)	NQ+	NQ+

There are not expected to be any financial impacts associated with Alternative 2 because it essentially represents the status quo. It would eliminate the Oregon longline fishery, authorized outside 25 nautical miles under the State's developmental fisheries program permit system. However, there are no active Oregon permits at the present time. This alternative would also eliminate the potential opportunity now available to West Coast based commercial fishermen for fishing off Oregon and California and landing in Oregon, which is currently not being exercised. The other alternatives offer potential increases in financial profits if it can be scientifically determined that there would not be an adverse impact on bycatch and protected species interactions.

Beyond the U.S. EEZ, the FMP applies to West Coast-based longline vessels all of the restrictions applied to Hawaii-based longline vessels when fishing west of 150° W. long., but applies selected restrictions to vessels fishing east of 150° W. long., which allows West Coast-based vessels to target swordfish east of 150° W. long. (except for a partial closure in April and May). Restrictions limit sea turtle and seabird interactions and improve monitoring of the fishery. Swordfish targeting would be allowed east of 150° W. long. for most of the year under the FMP, though the ESA section 7 consultations may result in a finding of jeopardy to one or more species listed under the ESA and alternative management measures may be necessary. The objectives of the proposed action provide for a longline fishing opportunity, giving due consideration to traditional participants in the fisheries, while providing adequate protection to sea turtles and seabirds.

A total of 38 vessels participated in the West Coast-based, high seas pelagic longline fishery during 2001 (see table below). All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR THE 38 WEST COAST- VESSELS WITH HIGH SEAS PELAGIC LONGLINE LANDINGS IN 2001.

Number of Vessels	Dependence on High Seas Longline Caught Swordfish (category of swordfish revenue/total revenue)	Average Total Ex-vessel Revenue ($/vessel)	Average Percent Longline Swordfish (swordfish revenue/total revenue)
4	< 50 percent	$228,951	32.57 percent
3	50-70 percent	$170,067	60.99 percent
3	> 70-80 percent	$222,089	76.66 percent
4	> 80-90 percent	$258,335	86.77 percent
13	> 90-95 percent	$182,211	93.26 percent
11	> 95 percent	$219,885	97.57 percent

Financial impacts of each high seas pelagic longline regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between pelagic longline ex-vessel private profits under the proposed action and pelagic longline private profits under Alternative 1, the status quo. The following table reports the estimated incremental changes in short-run financial profits for pelagic longline vessels for each regulatory alternative relative to the status quo. Financial impacts are evaluated as the present value of changes in short-run financial profits projected over a 25 year time period, discounted at 7 percent and 4 percent discount rates. The annual average change in short-run financial profits is also shown. The changes in financial profit were estimated using cost and earnings data voluntarily provided by industry members. Owners of 6 vessels provided 2 years of data each; this was about 25 percent of the active fleet in that period.

Under the status quo, the FMP would not impose regulations on the high seas, West Coast-based pelagic longline fishery. Fishing could continue without regulations until regulations are established under other authorities. Therefore, without the FMP, the future of the West Coast-based pelagic longline fishery operating on the high seas is expected to be different from recent conditions. Swordfish is the target species of this fishery, and swordfish sets may be prohibited; gear restrictions (no light sticks, minimum depth of sets, line clippers to release sea turtles) would apply; and seabird avoidance methods would be required. Longline fishing targeting tuna on the high seas out of West Coast ports might then be an alternative if swordfish targeting is prohibited, but current participants in the fishery indicate that without being able to target swordfish, the high seas longline fishery originating from West Coast ports would cease to exist. In view of this likelihood, the estimated financial impacts relative to Alternative 1 assume that regulations are likely in the future that would prohibit West Coast-based pelagic longliners from targeting swordfish on the high seas, and that under those circumstances the fishery would cease to exist.

Alternative 2 would allow the fishery to continue under selected restrictions, and the financial impact of Alternative 2, shown below, is based on a projection of current private profits in the fishery. Estimates of current private profits do not include the private costs that might be incurred in adopting turtle and seabird saving measures, placement of observers, and the installation and use of VMS, and any lost revenues from being unable to fish from 15° N. lat. to the equator, and from 145° W. long. to 180° W. long. during April and May. Therefore, private profits under Alternative 2 in the table below may be overstated. While some West Coast-based, high seas pelagic longliners harvest species other than swordfish, no attempt was made to evaluate potential changes in fishing strategies by these vessels in response to different harvest opportunities under each of the regulatory alternatives, and what this would mean in terms of operating costs and ex-vessel revenues under alternative fishing strategies. Alternative 2 was chosen because the Pacific Council concluded that it could not propose elimination of such a valuable fishery without clear indication that the takes of sea turtles would be excessive.

Alternative 3 would prohibit swordfish targeting with implementation of the FMP. Under Alternative 3 the assumption is that the fishery would disappear in the long run, in which case there is no difference from the status quo.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
High Seas Pelagic Longline Alternative 1: States' regulations would apply to longline fishing and landings and Federal regulations may be developed under other authorities. Vessels would have to obtain HSFCA permits and file HSFCA logbooks, as is now the case. (Status Quo/No Action)	NC	NC
High Seas Pelagic Longline Alternative 2: Applies to West Coast-based longline vessels fishing west of 150° W longitude all of the restrictions applied to Hawaii-based longline vessels, but east of 150° W long., applies selected restrictions, allowing West Coast-based vessels to target swordfish east of that line. (Proposed Action)	NA	$6,712,558
7–percent Discount Rate	$78,225,581	NA
4–percent Discount Rate	$105,645,527	NA
High Seas Pelagic Longline Alternative 3: Applies to West Coast-based longline vessels all conservation and management measures applied to Hawaii-based longline vessels to control sea turtle and seabird interactions and to monitor the fishery.	NC	NC
7–percent Discount Rate	NC	NC
4–percent Discount Rate	NC	NC

Alternative 2 would maintain the fishery, but impose some slight additional costs on West Coast-based longliners targeting swordfish on the high seas. Fishermen would have to incur some of the cost of adopting turtle and seabird saving measures, accommodating observers and using monitoring equipment such as a vessel monitoring system. Therefore, under Alternative 2 there would be a slight reduction in annual short-run, financial profits from those reported above. There may also be reductions in swordfish catch rates due to the alternative of turtle and seabird mitigation measures. This could further reduce short-run, financial profits. If subsequent analyses prove that swordfish longlining on the fishing grounds of the West Coast-based, high seas pelagic longline fleet results in less impact on turtles and other protected species (or that these interactions can be avoided), its further development could lead to increased short run financial profits. If on the other hand, subsequent analyses prove that swordfish longlining in the fishing grounds in the eastern north Pacific action area has potential for the same or greater impact on protected species, the fishery may not be able to continue operating unless ways to prevent jeopardy to protected species can be developed. In the latter case there are likely to be additional harvesting costs

involved to perform the prevention measures which in the absence of any improvements in harvest rates, or other efficiency gains, would reduce short-run financial profits.

The fishery will probably be subject to regulations promulgated under other authorities, which are expected to result in its disappearance in time. This is reflected in the long-term status quo, Alternative 1, where financial profits become zero with a phase out of the fishery. In the near term however, the fishery may persist under existing state regulations, in which case short-run financial profits are expected to be $6.8 million per year under the status quo. These are the same as the annual average financial profits that would be expected under Alternative 2 minus the cost of adopting turtle and seabird saving measures, accommodating observers and using monitoring equipment such as vessel monitoring systems. Short and long-term profits would disappear under Alternative 3 with the prohibition on targeting swordfish. Therefore, in the long term, Alternative 3 is the same as the status quo.

The FMP opens the entire U.S. EEZ to purse seine fishing, although there has been little interest in such fishing for highly migratory species off Oregon and Washington. The objectives of the proposed action are to provide for additional purse seine fishing opportunities. There were 27 vessels on average participating in the West Coast-based, coastal purse seine fishery during the 1995–99 period. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

Financial impacts of each purse seine regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between expected purse seine ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for pelagic longline vessels for each regulatory alternative relative to the status quo. There are no cost and earnings data available for purse seine fishing for highly migratory species off Oregon and Washington.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Purse Seine Alternative 1: State area closures would remain in effect under states' authorities. (Status Quo/No Action)	NC	NC
Purse Seine Alternative 2: Opens the entire U.S. EEZ to purse seine fishing. (Proposed Action)	NQ+	NQ+
Purse Seine Alternative 3: Closes the area within the U.S. EEZ north of 45° N latitude to purse seine fishing to address bycatch and protected species concerns, and possible adverse impacts on other fisheries.	NQ+	NQ+
Purse Seine Alternative 4: Closes the U.S. EEZ off Washington to purse seine fishing, but allows it off Oregon and California.	NQ+	NQ+

The proposed action will have little impact on private profits because there has been virtually no purse seine fishing for highly migratory species in the waters proposed to be closed.

Northern bluefin tuna do not generally occur in significant numbers in the Pacific Northwest except during periods of elevated water temperature. Thus, there would likely only be an increase in purse seine fishing activity for northern bluefin tuna during El Nino-like conditions. These conditions, by providing an additional fishing opportunity, would likely increase short-run financial profits for purse seiners that currently participate in the Oregon-Washington sardine fishery. Under exceptionally good bluefin fishing in Oregon-Washington waters, this opportunity might extend to California-based purse seiners.

Alternatives 3 and 4 would preclude existing fishing opportunities above 45° N. lat. for California and Oregon vessels. This could reduce their potential financial profits in years of exceptionally good bluefin fishing in these waters.

It is noted that only 2 purse seine vessels were recorded as landing HMS into a West Coast port in 2002. NMFS does not expect the development of a significant HMS purse seine fishery on the West Coast, due to lack of processing capability and markets, and the unlikelihood of new investment in new processing capability under the current price structure.

The FMP would prohibit the sale of striped marlin by all vessels. The objectives are to provide for continued recreational fishing opportunities. Prohibiting sale removes the incentive for commercial fishermen to take striped marlin.

Financial impacts of each regulatory alternative pertaining to the sale of striped marlin were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Marlin Sales Alternative 1: The sale of striped marlin would not be prohibited by Federal regulation in this FMP, but would continue to be prohibited by the State of California. (Status Quo/No Action)	NC	NC
Marlin Sales Alternative 2: Prohibits the sale of striped marlin by vessels under PFMC jurisdiction. (Proposed Action)	NC	NC

The proposed action will have little impact on private profits because there is virtually no change from the status quo. Striped marlin cannot now be sold, so no revenue impacts to the fishermen will ensue.

The FMP would require a Federal permit with a specific endorsement for each gear type (harpoon, drift gillnet, surface hook and line, purse seine, and pelagic longline). The permits and endorsements are subject to sanctions, including revocation, as provided by Section 308 (g) of the Magnuson-Stevens Act. Permits are a standard tool used to support management by facilitating collection of biological, economic or social data, facilitating enforcement of laws and regulations, identifying those who would be affected by actions to prevent or reduce excess capacity in the fishery, and providing information to meet international obligations.

A review of NMFS data bases indicates that there are an estimated 1,337 vessels likely to harvest highly migratory species. All vessels would be considered small businesses under the SBA standards. Therefore, there would be no disproportionate financial impacts between small and large vessels under the proposed action. The proposed action is duplicative in the sense that permit requirements implemented for other purposes (e.g., HSFCA) may require a vessel to have more than one permit to fish highly migratory species.

Financial impacts of each regulatory alternative pertaining to commercial fishing permits were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Commercial Permit Alternative 1: Require no new Federal permits. Federal permits under other laws would remain in place, as would state permit requirements. (Status Quo/No Action)	NC	NC
Commercial Permit Alternative 2: Requires a Federal permit for HMS vessels with a specific endorsement for each gear type (harpoon, DGN, surface hook and line, purse seine, and pelagic longline). The permit is to be issued to a vessel owner for each specific fishing vessel used in commercial HMS fishing. (Proposed Action)	NQ-	NQ-
Commercial Permit Alternative 3: Requires a Federal permit for all vessels engaged in commercial HMS fisheries within and outside the U.S. EEZ. One permit would cover all HMS fisheries for a given vessel.	NQ-	NQ-
Commercial Permit Alternative 4: Requires a Federal permit for all vessels engaged in selected commercial fisheries. Initial candidates for permits would be vessels engaged in DGN and longline fisheries.	NQ-	NQ-

Under Alternative 2 there would be a slight reduction in financial profits due to the cost of acquiring a commercial permit. Estimates of permit costs for commercial vessels are about $60.00 per vessel; a $40 permit fee and $20 for the time involved in filling out or confirming information on the permit registration form. The same costs would be entailed under Alternatives 3 and 4, no matter what the scope of the permit. This is an additional fixed cost, and although minor, may be disproportionate across smaller vessels engaged in HMS fisheries.

The FMP requires a Federal permit for all charter or commercial passenger carrying fishing vessels (CPFV) from which recreational fishers pursue highly migratory species, but an existing state permit or license for recreational vessels could meet this requirement. As with commercial fishing permits, this measure would provide a mechanism for identifying the scope of the recreational fishery and the participants so that data collection and research could be more focused and effective. There are approximately 300 charter and CPFV vessels on the West Coast. All these vessels would be considered small businesses under the SBA standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. The proposed action would not require new reporting, record-keeping, or other compliance requirements. However, permit processing and periodic permit renewal would be necessary under state laws and regulations.

Financial impacts of each regulatory alternative pertaining to recreational fishing permits were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Recreational Permit Alternative 1 Requires no new Federal permits for recreational vessels, private or party/charter. (Status Quo/No Action)	NC	NC
Recreational Permit Alternative 2: Requires a Federal permit for all CPFVs that fish for HMS, but an existing state permit or license for recreational vessels could meet this requirement. The Pacific Council would, however, request states to incorporate in their existing CPFV permit systems an allowance for an HMS species endorsement on permits, so that statistics could be gathered on that segment of the HMS fishery. (Proposed Action)	NQ-	NQ-
Recreational Permit Alternative 3: Requires a separate Federal permit for all CPFVs that fish for HMS; a state permit could not be used to fill this requirement, as in Alternative 2.	NQ-	NQ-
Recreational Permit Alternative 4: Requires a Federal permit for all recreational fishing vessels (private, party and charter/CPFV) that fish for HMS within and outside the U.S. EEZ.	NQ-	NQ-

Under Alternative 2, recreational vessels without a state permit would experience a slight reduction in financial profits due to the cost of acquiring a Federal recreational permit, which is estimated to be about $50.00 per vessel. This is an additional fixed cost, and even though minor, may be disproportionate across smaller vessels engaged in commercial passenger recreational fishing for highly migratory species. The same costs would be entailed under Alternatives 3 and 4, no matter what the scope of the permit. Alternative 3 could be somewhat duplicative if it were to overlap state requirements. If a vessel has a choice between a state and a federally issued permit to meet this requirement, there could be some cost savings, improved financial profits, if there is a difference in costs between state and Federal permits.

The FMP would require all commercial and recreational party or charter fishing vessels to maintain and submit logbooks to NMFS. State or existing Federal logbooks could meet this requirement as long as essential data elements are present and data are available to NMFS subject to a data exchange agreement. This measure would facilitate the monitoring of commercial and recreational vessel activities and enhance data collection. This measure would effect about 1,354 commercial and recreational vessels. The number of vessels for which this requirement poses an increased record keeping burden is unknown, but many vessels already are required to maintain state or existing Federal logbooks that would satisfy this requirement. The proposed action would impose new reporting and record-keeping requirements for some vessels. The proposed action is designed to avoid duplication of existing Federal reporting requirements.

Financial impacts of each regulatory alternative pertaining to fishing vessel reporting requirements were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25–Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Reporting Requirements Alternative 1: There would be no new Federal requirements for reporting, including Federal provisions for filling out Far Offshore Fishing Declarations. Existing Federal reporting requirements (e.g., HSFCA reports for fishing on the high seas) and state reporting requirements would apply. (Status Quo/No Action)	NC	NC
Reporting Requirements Alternative 2: Requires all commercial and recreational party or charter/CPFV fishing vessels to maintain and submit logbooks to NMFS. State or existing Federal logbooks could meet this requirement as long as essential data elements are present, and data are available to NMFS subject to a data exchange agreement. (Proposed Action)	NQ-	NQ-
Reporting Requirements Alternative 3 Limits new Federal reporting requirements to those commercial vessels that are not already required to report under existing Federal laws.	NQ-	NQ-

Under Alternative 2 there would be a slight reduction in financial profits due to the cost of satisfying the proposed reporting requirements for logbooks for those vessels that do not already meet these requirements. There are also additional reporting requirements associated with the use of vessel monitoring systems and vessel markings. Vessel monitoring systems would be required of longline vessels, but there are not expected to be any costs to vessels under this requirement. All vessels would be required to have identifying numbers, which would impose some additional fixed costs, and although minor, may be disproportionate across smaller vessels engaged in fisheries for highly migratory species. Under Alternative 3, financial impacts would be less because many vessels already maintain logbooks under existing Federal laws.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements will be submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 5 minutes for a confirmation of records for a permit application, 10 minutes to correct a record for a permit application, 30 minutes for a new permit application, 5 minutes for filling out a log each day, and 45 minutes to affix the official number of a vessel to its bow and weather deck. In addition, for longline vessels, the reporting burden includes 4 hours for installation of a vessel monitoring system, 2 hours for maintenance of the system, and 24 seconds for electronic reporting via the satellite based vessel monitoring system. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated information technology. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to, Svein Fougner, Assistant Administrator for Sustainable Fisheries, NMFS, Southwest Region (SEE **ADDRESSES**) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

A formal consultation under the ESA was initiated on September 24, 2003. Based on the conclusions of the consultation, the Regional Administrator will determine if fishing activities under this proposed rule are likely to affect adversely endangered or threatened species or their critical habitat under NMFS jurisdiction.

A formal consultation with the Fish and Wildlife Service (FWS) under the ESA was initiated by NMFS on September 22, 2003. Based on the consultation, the FWS will determine if fishing activities under this proposed rule are likely to affect adversely endangered or threatened species or their critical habitat under its jurisdiction.

The Regional Administrator has determined that, based on the information and analyses in the FMP, fishing activities conducted under this proposed rule would have no adverse impacts on marine mammals. Regulations promulgated under MMPA authority to implement a Pacific Offshore Cetacean Take Reduction Plan would remain in effect.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: December 3, 2003.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223, 50 CFR part 224, and 50 CFR part 660 are proposed to be amended as follows:

50 CFR Chapter VI

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.206, paragraph (d)(6) is removed and reserved.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

4. In § 224.104, paragraph (c) is revised to read as follows:

§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

* * * * *

(c) Special prohibitions relating to leatherback sea turtles are provided at § 223.206(d)(2)(iv) and § 660.713.

PART 660—FISHERIES OFF THE WEST COAST AND IN THE WESTERN PACIFIC

5. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. Add subpart K to read as follows:

Subpart K-Highly Migratory Fisheries

Sec.

Subpart K—Highly Migratory Fisheries

§ 660.701 Purpose and scope.

This subpart implements the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP). These regulations govern commercial and recreational vessels based on the West Coast and fishing for HMS seaward of the coasts of Washington, Oregon, and California.

§ 660.702 Definitions.

Basket-style longline gear means a type of longline gear that is divided into units called *baskets*, each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

Closure, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited.

Commercial fishing means (1) Fishing by a person who possesses a commercial

fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial fishing gear means the following types of gear and equipment used in the highly migratory species fisheries:

(1) *Harpoon.* Gear consisting of a pointed dart or iron attached to the end of a pole or stick that is propelled only by hand and not by mechanical means.

(2) *Surface hook-and-line.* Fishing gear, other than longline gear, with one or more hooks attached to one or more lines (includes troll, rod and reel, handline, albacore jig, live bait, and bait boat). Surface hook and line is always attached to the vessel.

(3) *Drift gillnet.* A panel of netting, 14 inch stretched mesh or greater, suspended vertically in the water by floats along the top and weights along the bottom. A drift gillnet is not stationary or anchored to the bottom.

(4) *Purse seine.* An encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets.

(5) *Pelagic longline.* A main line that is suspended horizontally in the water column and not stationary or anchored, and from which dropper lines with hooks (gangions) are attached. Legal longline gear also includes basket-style longline gear.

Council means the Pacific Fishery Management Council, including its Highly Migratory Species Management Team (HMSMT), Scientific and Statistical Committee (SSC), Highly Migratory Species Advisory Subpanel (HMSAS), and any other committee established by the Council.

Fishing trip is a period of time between landings when fishing is conducted.

Fishing year is the year beginning at 0801 GMT (0001 local time) on April 1 and ending at 0800 GMT on March 31 (2400 local time on September 30) of the following year.

Fishery management area means the U.S. EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

Highly Migratory species (HMS) means species managed by the FMP, specifically:

Billfish/Swordfish:

striped marlin (*Tetrapturus audax*)
swordfish (*Xiphias gladius*)

Sharks:

common thresher shark (*Alopias vulpinus*)
pelagic thresher shark (*Alopias pelagicus*)
bigeye thresher shark (*Alopias superciliosus*)
shortfin mako or bonito shark (*Isurus oxyrinchus*)
blue shark (*Prionace glauca*)

Tunas:

north Pacific albacore (*Thunnus alalunga*)
yellowfin tuna (*Thunnus albacares*)
bigeye tuna (*Thunnus obesus*)
skipjack tuna (*Katsuwonus pelamis*)
northern bluefin tuna (*Thunnus orientalis*)

Other:

dorado or dolphinfish (*Coryphaena hippurus*)

Highly Migratory Species Advisory Subpanel (HMSAS) means the individuals comprised of members of the fishing industry and public appointed by the Council to review proposed actions for managing highly migratory species fisheries.

Highly Migratory Species Fishery Management Plan (FMP) means the Fishery Management Plan for the U.S. West Coast Fisheries for Highly Migratory Species developed by the Pacific Fishery Management Council and approved by the Secretary and amendments to the FMP.

Highly Migratory Species Management Team (HMSMT) means the individuals appointed by the Council to review, analyze, and develop management measures for highly migratory species fisheries.

Incidental catch or incidental species means HMS caught while fishing for the primary purpose of catching other species with gear not authorized by the FMP.

Land or landing means offloading fish from a fishing vessel or arriving in port to begin offloading fish or causing fish to be offloaded from a fishing vessel.

Mesh size means the opening between opposing knots in a net. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot when the mesh is stretched, regardless of twine size.

Offloading means removing HMS from a vessel.

Permit holder means a permit owner.

Permit owner means a person who owns an HMS permit for a specific vessel fishing with specific authorized fishing gear.

Person, as it applies to fishing conducted under this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or *to process* means the preparation or packaging of HMS to render it suitable for human consumption, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

Prohibited species means those species and species groups whose retention is prohibited unless authorized by other applicable law (for example, to allow for examination by an authorized observer or to return tagged fish as specified by the tagging agency).

Quota means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only and not for sale, barter or trade of all or any part of the catch.

Recreational charter vessel means a vessel that carries fee-paying passengers for the purpose of recreational fishing.

Regional Administrator means the Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS, Office of Enforcement, Southwest Region, or a designee of the Special Agent-In-Charge.

Sustainable Fisheries Division (SFD) means the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, or a designee.

Transship means offloading or otherwise transferring HMS or products thereof to a receiving vessel.

Vessel monitoring system unit (VMS unit) means the hardware and software

equipment owned by NMFS, installed on vessels by NMFS, and required by §660.712(d) to track and transmit the positions of fishing vessels.

§ 660.703 Management area.

The fishery management area for the regulation of fishing for HMS comprises the waters of the U.S. EEZ as defined in §660.402 and the high seas seaward of the U.S. EEZ to the extent persons fishing with permits issued under this subpart are active in those areas.

§ 660.704 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The official number must be affixed to each vessel subject to this subpart in block Arabic numerals at least 14 inches (35.56 cm) in height. Markings must be legible and of a color that contrasts with the background.

§ 660.705 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for HMS in the U.S. EEZ off the Pacific coast without a permit issued under § 660.707 for the use of authorized commercial fishing gear.

(b) Fish with gear in any closed area in which the use of such gear is prohibited under this subpart.

(c) Land HMS at Pacific coast ports without a permit issued under § 600.707 for the use of authorized fishing gear.

(d) Sell HMS without an applicable commercial state fishery license.

(e) When fishing for HMS, fail to return a prohibited species to the sea immediately with a minimum of injury.

(f) Falsify or fail to affix and maintain vessel markings as required by § 660.704.

(g) Fish for HMS in violation of any terms or conditions attached to an exempted fishing permit issued under § 600.745 of this chapter or by § 660.718.

(h) When a directed fishery has been closed for a specific species, take and retain, possess, or land that species after the closure date.

(i) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(j) Falsify or fail to make and/or file any and all reports of fishing, landing, or any other activity involving HMS, containing all data, and in the exact manner, required by the applicable state law, as specified in § 660.708(b).

(k) Fail to carry aboard a vessel that vessel's permit issued under § 660.707 or exempted fishing permit issued under § 660.718.

(l) Fail to carry a VMS unit as required under § 660.712(d).

(m) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC.

(n) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit.

(o) Fish for, catch, or harvest HMS with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS.

(p) Possess HMS harvested with longline gear on board a vessel without a VMS unit after NMFS has installed the VMS unit on that vessel.

(q) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed west of 150° W. long. and north of the equator (0° lat.) on a vessel registered for use of longline gear in violation of § 660.712(a)(2).

(r) Possess a light stick on board a longline vessel when fishing west of 150° W. long. and north of the equator (0° lat.) in violation of § 660.712(a)(7)

(s) Possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing west of 150° W. long. and north of the equator (0° lat.) in violation of § 660.712(a)(10).

(t) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit.

(u) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer.

(v) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC.

(w) Fish for HMS (including transshipping HMS) with a vessel registered for use with longline gear within closed areas or by use of unapproved gear configurations in violation of § 660.712(a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(8), or (a)(9).

(x) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use of longline gear and equipped with monofilament main longline, when making deep sets north of 23° N. lat. in violation of § 660.712 (c)(1)(i) and (c)(1)(ii).

(y) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use of longline gear north of 23° N. lat. in violation of § 660.712(c)(1)(iii).

(z) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use of longline gear that is fishing north of 23° N. lat., in violation of § 660.712(c)(2) and (c)(3).

(aa) Fail to retain, handle, and discharge fish, fish parts, and spent bait strategically when operating a vessel registered for use of longline gear that is fishing north of 23° N. lat. in violation of § 660.712 (c)(4) through (c)(7).

(bb) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.712(c)(8).

(cc) Fail to handle seabirds other than short-tailed albatross that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival in violation of § 660.712(c)(9).

(dd) Own a longline vessel registered for use of longline gear that is engaged in longline fishing for HMS without a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.712(e)(3).

(ee) Fish for HMS on a vessel registered for use of longline gear without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.712(e).

(ff) Fail to carry line clippers, dip nets, and wire or bolt cutters on a vessel registered for use as a longline vessel in violation of § 660.712(b).

(gg) Fail to comply with sea turtle handling, resuscitation, and release requirements specified in § 660.712(b)(4) through (7) when operating a vessel.

(hh) Fail to comply with seabird take mitigation or handling techniques required under § 660.712(c)

(ii) Fish for HMS with a vessel registered for use as a longline vessel without being certified by NMFS for completion of an annual protected species workshop as required under § 660.712(e).

§ 660.706 Pacific Coast Treaty Indian rights.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest HMS in their usual and accustomed (u&a) fishing areas in U.S. waters.

(b) Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) The NMFS recognizes the areas set forth below as marine u&a fishing grounds of the four Washington coastal tribes. The Makah u&a grounds were adjudicated in *U.S.* v. *Washington*, 626 F.Supp. 1405, 1466 (W.D. Wash. 1985), affirmed 730 F.2d 1314 (9th Cir. 1984). The u&a grounds of the Quileute, Hoh, and Quinault tribes have been recognized administratively by NMFS. See, e.g., 64 FR 24087 (May 5, 1999) (u&a grounds for groundfish); 50 CFR 300.64(i) (u&a grounds for halibut). The u&a grounds recognized by NMFS may be revised as ordered by a Federal court.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary of Commerce, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the NMFS Northwest Regional Administrator, at least 120 days prior to the time the allocation is desired to be effective, and will be subject to public review through the Council process. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is prima facie evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) Fishing (on a tribal allocation or under a Federal regulation applicable to tribal fisheries) by a member of a Pacific Coast treaty Indian tribe within that tribe's usual and accustomed fishing area is not subject to provisions of the HMS regulations applicable to non-treaty fisheries.

(g) Any member of a Pacific Coast treaty Indian tribe must comply with any applicable Federal and tribal laws and regulations, when participating in a tribal HMS fishery implemented under paragraph (d) above.

(h) Fishing by a member of a Pacific Coast treaty Indian tribe outside that tribe's usual and accustomed fishing area, or for a species of HMS not covered by a treaty allocation or applicable Federal regulation, is subject to the HMS regulations applicable to non-treaty fisheries.

§ 660.707 Permits.

(a) *General.* This section applies to fishing for HMS off, or landing HMS in, the States of California, Oregon, and Washington.

(1) By January 1, 2005, a commercial fishing vessel or a recreational charter vessel of the United States must be registered for use under a HMS permit if that vessel is used:

(i) To engage in commercial fishing for HMS in the U.S. EEZ off the States of California, Oregon, and Washington;

(ii) To carry passengers for hire on a trip to engage in recreational fishing; or

(iii) To land or transship HMS shoreward of the outer boundary of the U.S. EEZ off the States of California, Oregon, and Washington.

(2) The permit must be on board the vessel and available for inspection by an authorized officer, except that if the permit was issued while the vessel was at sea, this requirement applies only to any subsequent trip.

(3) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(4) A permit is valid only for the gear type for which an endorsement has been issued for that permit.

(5) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) an HMS permit with an endorsement for use of gear for commercial fishing.

(b) *Application.* (1) Following publication of the final rule implementing the FMP, NMFS will issue permits to the owners of those vessels on a list of vessels obtained from owners previously applying for a permit under the authority of the High Seas Fishing Compliance Act (HSFCA), the Tuna Conventions Act of 1950, and § 660.21(a) of this part.

(2) All permits issued by NMFS in accordance with paragraph (b)(1) of this section will be issued by [date 60 days following effective date of final rule] and for commercial fishing vessels will authorize the use of specific fishing gear.

(3) Beginning on [date 60 days following effective date of final rule], any vessel owner who has not received an HMS permit but who wishes to have such a permit may apply to the SFD for a permit to fish for HMS off the coasts of California, Oregon, and Washington by obtaining a Southwest Region Federal Fisheries application form from the SFD and submitting a completed application. A completed application is one that contains all the necessary information and signatures required. A copy of the application may be obtained at *http://swr.nmfs.noaa.gov/permits.htm*.

(4) A minimum of 15 business days should be allowed for SFD to process a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(5) Permits issued under this subpart will remain valid for 5 years unless revoked or suspended.

(6) SFD will issue replacement permits without charge to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(7) Any permit that has been altered, erased, or mutilated is invalid.

(c) *Display.* A permit issued under this subpart is required to land HMS in any port of California, Oregon and Washington. Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing HMS taken when fishing under the permit. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(d) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

§ 660.708 Reporting and recordkeeping.

(a) *Logbooks.* The operator of any commercial fishing vessel and any recreational charter vessel fishing for HMS in the management area must maintain on board the vessel an accurate and complete record of catch, effort, and other data on logbook report forms provided by the Regional Administrator, or by a state agency that has entered into an agreement with the Regional Administrator. All information specified on the form(s) must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to either the Regional Administrator or the appropriate state management agency within 30 days of each landing or transhipment of HMS. Each form must be signed and dated by the fishing vessel operator.

(1) Logbooks acceptable to meeting the reporting requirements of this section may be found at *http://swr.nmfs.noaa.gov/logbooks.htm*, and may include:

(i) The logbook required under § 300.21 implementing the Tuna Conventions Act of 1950;

(ii) The logbook required under § 660.14 implementing the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region;

(iii) The logbook required by § 300.17 implementing the High Seas Fishing Compliance Act of 1995.

(iv) Any logbook required by the fishery management agency of the States of California, Oregon, or Washington.

(2) Any holder of a permit who does not maintain and submit a logbook for a fishing trip under any of the above authorities must obtain a copy of the appropriate logbook from the SFD and maintain and submit the form provided by SFD.

(3) The Regional Administrator may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing logbook forms.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of HMS containing all data, and in the exact manner, required by the applicable state law.

§ 660.709 Annual specifications.

(a) *Procedure.* (1) In June of each year, the HMSMT will deliver a preliminary SAFE report to the Council for all HMS with any necessary recommendations for harvest guidelines, quotas or other management measures to protect HMS.

(2) In September of each year, the HMSMT will deliver a final SAFE report to the Council. The Council will adopt any necessary harvest guidelines, quotas or other management measures for public review.

(3) In November each year, the Council will take final action to propose any necessary harvest guidelines, quotas, or other management measures and make its recommendations to NMFS. The proposal shall include description of the purpose of the specifications and analyze the impacts of implementing such specifications.

(4) The Regional Administrator will implement through rulemaking any necessary and appropriate harvest guidelines, quotas, or other management measures based on the SAFE report, recommendations from the Council, and the requirements contained in the FMP.

(b) Fishing seasons for all species will begin on April 1 of each year at 0001 hours local time and terminate at 2400 hours local time on March 31 of each subsequent year.

(c) Harvest guidelines, quotas, and other management measures announced for a particular year will remain in effect the following year unless changed through the public review process described in paragraph (a) of this section.

(d) Irrespective of the normal review process, the Council may recommend management action to conserve and manage the fisheries at any time. The Council may adopt a management cycle different from the one described in this section provided that such change is made by a majority vote of the Council and a 6–month notice of the change is given. To the extent such recommendations are found necessary and reasonable, NMFS will implement them through rulemaking.

§ 660.710 Closure of directed fishery.

(a) When a quota has been taken, the Regional Administrator will announce in the **Federal Register** the date of closure of the fishery for the species of concern.

(b) When a harvest guideline has been taken, the Regional Administrator will initiate review of the species of concern according to section 8.4.8 of the FMP and publish in the **Federal Register** any necessary and appropriate regulations following Council recommendations.

§ 660.711 General catch restrictions.

(a) *Prohibited species.* HMS under the FMP for which quotas have been achieved and the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmon

(2) Great white shark

(3) Basking shark

(4) Megamouth shark

(5) Pacific halibut

(b) *Incidental landings.* HMS caught by gear not authorized by this subpart may be landed in incidental amounts as follows:

(1) Drift gillnet vessels with stretched mesh less than 14 inches may land up to 10 HMS per trip, except that no swordfish may be landed.

(2) Bottom longline vessels may land up to 20 percent by weight of management unit sharks in landings of all species or 3 management unit sharks, whichever is greater.

(3) Trawl and pot gear may land up to 1 percent by weight of management unit sharks in a landing of all species or 2 management unit sharks, whichever is greater.

(c) *Marlin prohibition.* The sale of striped marlin is prohibited.

(d) *Sea turtle handling and resuscitation.* All sea turtles taken incidentally in fishing operations by any HMS vessel must be handled in accordance with 50 CFR part 223.206(d)(1).

§ 660.712 Longline fishery.

(a) Gear and fishing restrictions. (1) Owners and operators of vessels registered for use of longline gear may not use longline gear to fish for or target HMS within the U.S. EEZ.

(2) Owners and operators of vessels registered for use of longline gear may not use longline gear to fish for or target swordfish (*Xiphias gladius*) west of 150° W. long. and north of the equator (0° N. lat.).

(3) A person aboard a vessel registered for use of longline gear fishing for HMS west of 150° W. long. and north of the equator (0° N. lat.) may not possess or deploy any float line that is shorter than or equal to 20 m (65.6 ft or 10.9 fm). As used in this paragraph, float line means a line used to suspend the main longline beneath a float.

(4) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not use longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(5) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not receive from another vessel HMS that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(6) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not land or transship HMS that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(7) No light stick may be possessed on board a vessel registered for use of longline gear during fishing trips that include any fishing west of 150° W. long. and north of the equator (0° N. lat.). A light stick as used in this paragraph is any type of light emitting device, including any flourescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(8) When a conventional monofilament longline is deployed in waters west of 150° W. long. and north of the equator (0° N. lat.) by a vessel registered for use of longline gear, no fewer than 15 branch lines may be set

between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing in waters north of the equator.

(9) Longline gear deployed west of 150° W. long. and north of the equator (0° N. lat.) by a vessel registered for use of longline gear must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(10) Owners and operators of longline vessels registered for use of longline gear may land or posses no more than 10 swordfish from a fishing trip where any part of the trip included fishing west of 150° W. long. and north of the equator (0° N. lat.).

(b) *Sea turtle take mitigation measures.* (1) Owners and operators of vessels registered for use of longline gear must carry aboard their vessels line clippers meeting the minimum design standards specified in (b)(2) of this section, dip nets meeting minimum standards specified in (b)(3) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in (b)(4) through (b)(6) of this section.

(2) Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (see figure 1 of this subpart). The minimum design standards are as follows:

(i) The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(3) Dip nets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that minimizes injury and trauma to sea turtles. The minimum design standards for dip nets that meet the requirements of this section are:

(i) The dip net must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion.

(ii) The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm x 7.62 cm).

(4) All incidentally taken sea turtles brought aboard for dehooking and/or disentanglement must be handled in a manner to minimize injury and promote post-hooking survival.

(i) When practicable, comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in paragraphs (b)(5) and (b)(6) of this section.

(ii) If a sea turtle is too large or hooked in such a manner as to preclude safe boarding without causing further damage/injury to the turtle, line clippers described in paragraph (b)(2) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

(iii) If a sea turtle is observed to be hooked or entangled by longline gear during hauling operations, the vessel operator must immediately cease hauling operations until the turtle has been removed from the longline gear or brought on board the vessel.

(iv) Hooks must be removed from sea turtles as quickly and carefully as possible. If a hook cannot be removed from a turtle, the line must be cut as close to the hook as possible.

(5) If the sea turtle brought aboard appears dead or comatose, the sea turtle must be placed on its belly (on the bottom shell or plastron) so that the turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. A reflex test, performed by gently touching the eye and pinching the tail of a sea turtle, must be administered by a vessel operator, at least every 3 hours, to determine if the sea turtle is responsive. Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance may be placed into a container holding water. A water-soaked towel placed over the eyes, carapace, and flippers is the most effective method to keep a turtle moist. Those that revive and become active must be returned to the sea in the manner described in paragraph (b)(6) of this section. Sea turtles that fail to revive within the 24–hour period must also be returned to the sea in the manner described in paragraph (b)(6)(i) of this section.

(6) Live turtles must be returned to the sea after handling

in accordance with the requirements of paragraphs (b)(4) and (b)(5) of this section:

(i) By putting the vessel engine in neutral gear so that the

propeller is disengaged and the vessel is stopped, and releasing the turtle away from deployed gear; and

(ii) Observing that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(7) In addition to the requirements in paragraphs (b) and (c) of this section, a vessel operator shall perform sea turtle handling and resuscitation techniques consistent with § 223.206(d)(1) of this title, as appropriate.

(c) *Longline seabird mitigation measures.* (1) Seabird mitigation techniques. Owners and operators of vessels registered for use of longline gear must ensure that the following actions are taken when fishing north of 23° N. lat.:

(i) Employ a line setting machine or line shooter to set the main longline when making deep sets west of 150° W. long. using monofilament main longline;

(ii) Attach a weight of at least 45 g to each branch line within 1 m of the hook when making deep sets using monofilament main longline;

(iii) When using basket-style longline gear, ensure that the main longline is deployed slack to maximize its sink rate;

(2) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS;

(3) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel;

(4) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled;

(5) Retain sufficient quantities of fish, fish parts, or spent bait, between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (a)(6) of this section;

(6) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (c)(4) of this section; and

(7) Remove the bill and liver of any swordfish that is caught, sever its head from the trunk and cut it in half vertically, and periodically discharge the butchered heads and livers in accordance with paragraph (a)(6) of this section.

(8) If a short-tailed albatross is hooked or entangled by a vessel registered for use of longline gear, owners and operators must ensure that the following actions are taken:

(i) Stop the vessel to reduce the tension on the line and bring the bird on board the vessel using a dip net;

(ii) Cover the bird with a towel to protect its feathers from oils or damage while being handled;

(iii) Remove any entangled lines from the bird;

(iv) Determine if the bird is alive or dead.

(A) If dead, freeze the bird immediately with an identification tag attached directly to the specimen listing the species, location and date of mortality, and band number if the bird has a leg band. Attach a duplicate identification tag to the bag or container holding the bird. Any leg bands present must remain on the bird. Contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop, inform them that you have a dead short-tailed albatross on board, and submit the bird to NMFS within 72 hours following completion of the fishing trip.

(B) If alive, handle the bird in accordance with paragraphs (c)(8)(iv)(C) through (J) of this section.

(C) Place the bird in a safe enclosed place;

(D) Immediately contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

(E) Follow the veterinary guidance regarding the handling and release of the bird.

(F) Complete the short-tailed albatross recovery data form issued by NMFS.

(G) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(17)(iv) and (v) of this section, and release the bird only if it meets the following criteria:

(*1*) Able to hold its head erect and respond to noise and motion stimuli;

(*2*) Able to breathe without noise;

(*3*) Capable of flapping and retracting both wings to normal folded position on its back;

(*4*) Able to stand on both feet with toes pointed forward; and

(*5*) Feathers are dry.

(H) If released under paragraph (G) of this section or under the guidance of a veterinarian, all released birds must be placed on the sea surface.

(I) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water.

(J) Complete the short-tailed albatross recovery data form issued by NMFS.

(9) If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use of longline gear, owners and operators must ensure that the following actions are taken:

(i) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(ii) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(iii) Remove any entangled lines from the seabird;

(iv) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(v) Cut the fishing line as close as possible to ingested or

inaccessible hooks;

(vi) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(vii) After recovered, release seabirds by placing them on the sea surface.

(d) *Vessel monitoring system.* (1) Only a VMS unit owned by NMFS and installed by NMFS

complies with the requirement of this subpart.

(2) After the holder of a permit to use longline gear has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(3) During the experimental VMS program, a longline permit holder shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(4) The holder of a longline permit and the master of the vessel operating under the permit must:

(i) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(ii) Carry the VMS unit on board whenever the vessel is at sea.

(iii) Not remove or relocate the VMS unit without prior approval from the SAC.

(5) The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

(e) *Protected species workshop.* (1) Each year both the owner and the operator of a vessel registered for use of longline gear must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(2) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(3) An owner of a vessel registered for use of longline gear must have on file a valid protected species workshop certificate or copy issued by NMFS in order to maintain or renew their vessel registration.

(4) An operator of a vessel registered for use of longline gear must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

§ 660.713 Drift gillnet fishery.

(a) *Take reduction plan gear restrictions.* Gear restrictions implementing the Pacific Offshore Cetacean Take Reduction Plan under the authority of the Marine Mammal Protection Act of 1972 remain in effect and can be found at 50 CFR 229.31.

(b) *Other gear restrictions.* (1) The maximum length of a drift gillnet on board a vessel shall not exceed 6,000 ft (1,828.8 m).

(2) Up to 1,500 ft (457.2 m) of drift gillnet in separate panels of 600 ft (182.9 m) may be on board the vessel in a storage area.

(c) *Protected Resource Area Closures.* (1) No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed (see figure 3 of this section):

(i) Pt. Sur at 36° 18.5′ N. lat.;

(ii) 34° 27′ N. lat. 123° 35′ W. long.;

(iii) 34° 27′ N. lat. 129° W. long.;
(iv) 45° N. lat. 129° W. long.; and
(v) the point where 45° N. lat. intersects the Oregon coast.

(2) No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean south of 34o 27' N. lat. (Pt. Conception) and east of 120° W. long. from January 1 through January 31 and from August 15 through August 31 during a forecasted or occurring El Nino event.

(i) The Assistant Administrator will publish a notification in the **Federal Register** that an El Nino event is occurring off, or is forecast for off, the coast of southern California and the requirement for time area closures in the Pacific loggerhead conservation zone. The notification will also be announced in summary form by other methods as the Assistant Administrator determines necessary and appropriate to provide notice to the California/Oregon drift gillnet fishery.

(ii) The Assistant Administrator will rely on information developed by NOAA offices that monitor El Nino events, such as NOAA's Coast Watch program, and developed by the State of California, to determine if such a notice should be published. The requirement for the area closures from January 1 through January 31 and from August 15 through August 31 will remain effective until the Assistant Administrator issues a notice that the El Nino event is no longer occurring.

(d) *Mainland area closures.* The following areas off the Pacific coast are closed to driftnet gear:

(1) Within the U.S. EEZ from the United States-Mexico International Boundary to the California-Oregon border from February 1 through April 30.

(2) In the portion of the U.S. EEZ within 75 nautical miles from the mainland shore from the United States-Mexico International Boundary to the California-Oregon border from May 1 through August 14.

(3) In the portion of the U.S. EEZ within 25 miles of the coastline from December 15 through January 31 of the following year from the United States-Mexico International Boundary to the California-Oregon border.

(4) In the portion of the U.S. EEZ from August 15 through September 30 within the area bounded by line extending from Dana Point to Church Rock on Santa Catalina Island, to Point La Jolla.

(5) In the portion of the U.S. EEZ within 12 nautical miles from the mainland shore north of a line extending west of Point Arguello to the California-Oregon border.

(6) In the portion of the U.S. EEZ within the area bounded by a line from the lighthouse at Point Reyes, California to Noonday Rock, to Southeast Farallon Island to Pillar Point.

(7) In the portion of the U.S. EEZ off the Oregon coast east of a line approximating 1000 fathoms as defined by the following coordinates:
42° 00′ 00″ N. lat. 125° 10′ 30″ W. long.
42° 25′ 39″ N. lat. 124° 59′ 09″ W. long.
42° 30′ 42″ N. lat. 125° 00′ 46″ W. long.
42° 30′ 23″ N. lat. 125° 04′ 14″ W. long.
43° 02′ 56″ N. lat. 125° 06′ 57″ W. long.
43° 01′ 29″ N. lat. 125° 10′ 55″ W. long.
43° 50′ 11″ N. lat. 125° 19′ 14″ W. long.
44° 03″23″ N. lat. 125° 12′ 22″ W. long.
45° 00′ 06″ N. lat. 125° 16′ 42″ W. long.
45° 25′ 27″ N. lat. 125° 16′ 29″ W. long.
45° 45′ 37″ N. lat. 125° 15′ 19″ W. long.
46° 04′ 45″ N. lat. 125° 24′ 41″ W. long.
46° 16′ 00″ N. lat. 125° 20′ 32″ W. long.

(8) In the portion of the U.S. EEZ north of 46° 16′ N. latitude (Washington coast).

(e) *Channel Islands area closures.* The following areas off the Channel Islands are closed to driftnet gear:

(1) *San Miguel Island closures.* (i) Within the portion of the U.S. EEZ north of San Miguel Island between a line extending 6 nautical miles west of Point Bennett and a line extending 6 nautical miles east of Cardwell Point.

(ii) Within the portion of the U.S. EEZ south of San Miguel Island between a line extending 10 nautical miles west of Point Bennett and a line extending 10 nautical miles east of Cardwell Point.

(2) *Santa Rosa Island closure.* Within the portion of the U.S. EEZ north of San Miguel Island between a line extending 6 nautical miles west from Sandy Point and a line extending 6 nautical miles east of Skunk Point from May 1 through July 31.

(3) *San Nicolas Island closure.* In the portion of the U.S. EEZ within a radius of 10 nautical miles of 33° 16′ 41″ N. lat., 119° 34′ 39″ W. long. (west end) from May 1 through July 31.

(4) *San Clemente Island closure.* In the portion of the U.S. EEZ within 6 nautical miles of the coastline on the easterly side of San Clemente Island within a line extending 6 nautical miles west from 33° 02' 16'' N. lat., 118° 35′ 27″ W. long. and a line extending 6 nautical miles east from the light at Pyramid Head.

§ 660.714 Purse seine. [Reserved]

§ 660.715 Harpoon. [Reserved]

§ 660.716 Surface hook-and-line. [Reserved]

§ 660.717 Framework for revising regulations.

(a) *General.* NMFS will establish and adjust specifications and management measures in accordance with procedures and standards in the FMP.

(b) *Annual actions.* Annual specifications are developed and implemented according to § 660.709.

(c) *Routine management measures.* Consistent with section 3.4 of the FMP, management measures designated as routine may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register**.

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework measures in section 8.3.4 of the FMP and will be published in the **Federal Register.**

§ 660.718 Exempted fishing.

(a) In the interest of developing an efficient and productive fishery for HMS, the Regional Administrator may issue exempted fishing permits for the harvest of HMS in a manner or at times or places that otherwise would be prohibited.

(b) No exempted fishing for HMS may be conducted unless authorized by an EFP issued for the participating vessel in accordance with the criteria and procedures specified in § 600.745 of this chapter.

§ 660.719 Scientific observers.

(a) All fishing vessels operating in HMS fisheries, including catcher/processors, at-sea processors, and vessels that harvest in Washington, Oregon, or California and land catch in another area, may be required to accommodate NMFS certified observers on board to collect scientific data. Any observer program will be implemented in accordance with the procedures at § 660.717.

(b) All vessels with observers on board must comply with the safety regulations at 50 CFR 600.746.

(c) NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip.

(d) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart or as a condition of an EFP issued under 50 CFR 660.718, the vessel may not engage in the fishery without taking the observer.

(e) A permit holder must accommodate a NMFS observer assigned under these regulations. The Regional Administrator's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel

necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or sea bird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel.

[FR Doc. 03–30486 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 112103E]

RIN 0648–AR66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Continuation of the Madison/Swanson and Steamboat Lumps Marine Reserves

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Amendment 21 to the reef fish resources of the Gulf of Mexico; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 21 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for review, approval, and implementation by NMFS. Amendment 21 would continue the marine reserves at Madison-Swanson and Steamboat Lumps for an additional 6 years and revise the fishing restrictions that apply within the reserves. The intended effects of Amendment 21 are to provide protection for spawning aggregations of gag grouper in order to prevent overfishing, continue protection of a portion of the offshore population of male gag grouper, and evaluate the effect and usefulness of marine reserves as a management tool.

DATES: Written comments must be received on or before February 9, 2004.

ADDRESSES: Written comments must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–522–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of Amendment 21, which includes an environmental assessment (EA), a supplemental regulatory impact review (RIR) and initial regulatory flexibility analysis (IRFA), and a copy of a minority report filed by three Council members opposing provisions in the amendment that allow seasonal surface trolling within the reserves, may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; phone: 813–228–2815; fax: 813–833–1844; e-mail: *gulf.council@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305; fax: 727–570–5583; e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, immediately publish a document in the **Federal Register** stating that the plan or amendment is available for public review and comment.

The Council has submitted Amendment 21 to the subject FMP to NMFS, for Secretarial review. The amendment proposes to: (1) extend the marine reserves at Madison-Swanson and Steamboat Lumps for an additional 6 years; (2) allow surface trolling in the marine reserves during May through October; (3) prohibit all fishing and possession of all fish species in the marine reserves during November through April except for vessels transiting the marine reserves in accordance with the same requirements as those proposed for the Tortugas South and North closed fishing areas (Reef Fish Amendment 19); and (4) prohibit the possession of reef fish within the reserves except for vessels transiting the reserves in accordance with the same requirements as proposed for the Tortugas South and North closed fishing areas (Reef Fish Amendment 19). Additionally, the Council will send a letter to the Highly Migratory Species Division of NMFS requesting that they implement regulations compatible with the proposals in this amendment for species under their jurisdiction.

A proposed rule that would implement measures outlined in the amendment has been prepared. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 21, the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by February 9, 2004, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 21. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 21 or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 4, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30608 Filed 12–9–03; 8:45 am]

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Notices

Federal Register
Vol. 68, No. 237
Wednesday, December 10, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. FV04–371]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for an extension of a currently approved information collection for the Reporting and Recordkeeping Requirements Under Regulations Under the Perishable Agricultural Commodities Act, 1930, as amended.

DATES: Comments received by February 9, 2004 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to Dexter Thomas, Senior Marketing Specialist, PACA Branch, F & V Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2095—So. Bldg., Mail Stop 0242, Washington, DC 20250–0242. E-mail *dexter.thomas@usda.gov.* All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for public inspection in the PACA Branch during regular business hours and posted on the Internet at *http://www.ams.usda.gov/fv/paca.htm.*

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements Under Regulations (Other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Number: 0581–0031.

Expiration Date of Approval: September 30, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent trade practices.

The law provides a forum for resolving contract disputes, and a mechanism for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA provides for prompt payment of fruit and vegetable sellers and for revocation of licenses and sanctions against firms or principals who violated the law's standards for fair business practices. The PACA also imposes a statutory trust that attaches to perishable agricultural commodities received by regulated entities, products derived from the commodities, and any receivables or proceeds from the sale of the commodities. The trust exists for the benefit of produce suppliers, sellers, or agents that have not been paid, and continues until they have been paid in full.

The PACA is enforced through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the PACA must be licensed. Retailers and grocery wholesalers must renew their licenses every three years. All other licensees have the option of a one, two, or three-year license term. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected is used to administer licensing provisions under the PACA, to adjudicate contract disputes, and for the purpose of enforcing the PACA and the regulations. The purpose of this notice is to solicit comments from the public concerning our information collection.

We estimate the paperwork and time burden on the above to be as follows:

Form FV–211 (or 211–1, or 211–2, or 211–3, or 211–4, or 211–5), Application for License: Average of .25 hours per application per response.

Form FV–231–1 (or 231–1A, or 231–2, or 231–2A), Application for Renewal or Reinstatement of License: Average of .05 hours per application per response.

Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations: Average of .05 hours per notice per response.

Regulations Section 46.4—Limited Liability Company Articles of Organization and Operating Agreement: Average of .083 hours with approximately 220 recordkeepers.

Regulations Section 46.18—Record of Produce Received: Average of 5 hours with approximately 18,400 recordkeepers.

Regulations Section 46.20—Records Reflecting Lot Numbers: Average of 8.25 hours with approximately 1,000 recordkeepers.

Regulations Section 46.46(d)(2)—Waiver of Rights to Trust Protection: Average of .25 hours per notice with approximately 100 principals.

Regulations Sections 46.46(f) and 46.2(aa)(11)—Copy of Written Agreement Reflecting Times for Payment: Average of 20 hours with approximately 2,670 recordkeepers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.8203 hours per response.

Respondents: Commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of commercial quantities of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

Estimated Number of Respondents: 15,829.

Estimated Number of Responses: 40,609

Estimated Number of Responses per Respondent: 2.5654.

Estimated Total Annual Burden on Respondents: 155,138.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the

methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Dexter Thomas, Senior Marketing Specialist, PACA Branch, F & V Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2095-So. Bldg., Mail Stop 0242, Washington, DC 20250–0242. E-mail—*dexter.thomas@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30599 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–04–02]

Beef Promotion and Research: Certification and Nomination for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations or associations and general farm organizations, as well as cattle or beef importer organizations, who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by close of business January 9, 2004.

ADDRESSES: Certification form as well as copies of the certification and nomination procedures may be requested from Kenneth R. Payne, Chief; Marketing Programs Branch, LS, AMS, USDA; STOP 0251–Room 2638–S; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. The form may also be found on the Internet at *http://www.ams.usda.gov/lsg/mpb/beef/ls25.pdf.*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720–1115.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act)(7 U.S.C. 2901 *et seq.*), enacted December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 100 cattle producers and 8 importers appointed by USDA. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that USDA shall either certify or otherwise determine the eligibility of State cattle producer organizations or associations and general farm organizations, as well as any importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Persons who are individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of USDA that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order [7 CFR 1260.143(b)(2)]. Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process, including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557) and currently appear at 7 CFR § 1260.500 through § 1260.640. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the upcoming vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of 3 years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in early 2005:

State or unit	Number of vacancies
Alabama	1
Arkansas	1
California	2
Colorado	1
Florida	1
Idaho	1
Illinois	1
Indiana	1
Iowa	2
Kansas	2
Kentucky	1
Minnesota	1
Missouri	2
Montana	1
Nebraska	2
New York	1
North Dakota	1
Ohio	1
Oklahoma	2
Oregon	1
Pennsylvania	1
South Dakota	1
Tennessee	1
Texas	5
Virginia	1
Wisconsin	1
Northwest Unit	1
Southeast Unit	1
Importer Unit	1

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations and general farm organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official ''Application for Certification of Organization or Association,'' which must be received by close of business [January 9, 2004]. Uncertified eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR 1260.540(b). Applications from States or units without vacant positions

on the Board and other applications not received within the 30-day period after publication of this notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR § 1260.530 are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit,

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit,

(3) There must be a history of stability and permanency, and

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by USDA as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (*i.e.*, beef or cattle importers, etc.),

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle,

(3) The stability and permanency of the importer organization or association,

(4) The number of years in existence, and

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those that were previously certified in the States or units having vacant positions on the Board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to USDA for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30604 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–303]

United States Standards for Grades of Field Grown Leaf Lettuce

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with creating an official grade standard, is soliciting comments on the petition to create the United States Standards for Grades of Field Grown Leaf Lettuce. At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry and identify commodities that may be better served if a grade standard was developed. As a result, AMS has noted that the industry is interested in the creation of standards for field grown leaf lettuce.

DATES: Comments must be received by February 9, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240, fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185, e-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION: At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry and to identify commodities that may be better served if a grade standard was developed. AMS has identified field grown leaf lettuce as a possible commodity for development of United States Standards for Grades of Field Grown Leaf Lettuce. Currently, there are U.S. Standards for Grades of Greenhouse Leaf Lettuce, but no standards for leaf lettuce grown in open fields. When requested to inspect field grown leaf lettuce, the greenhouse leaf lettuce standards may be used as a reference, but cannot be used for grade determination.

A new standard for leaf lettuce grown in open fields could contain sections pertaining to grades, tolerances, application of tolerances, pack requirements, definitions, and other relevant and necessary provisions. Prior to undertaking detailed work to develop the proposed standards for field grown leaf lettuce, AMS is soliciting comments on the possible development of the standards for grades of field green leaf lettuce and the probable impact on distributors, processors, and growers.

This notice provides for a 60-day comment period for interested parties to comment on the development of the standards. Should AMS conclude that there is a need for the development of the standards, the proposed standards will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30603 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. FV–04–328]

United States Standards for Grades of Frozen Celery

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is establishing the United States Standards for Grades of Frozen Celery. USDA received a petition from a grower and a processor of celery

to create grade standards for frozen celery that will include a description of the product, style, sample unit size, grades, ascertaining the grade by sample, and ascertaining the grade by lot. The standard is intended to provide a common language for trade, and a means of measuring value in the marketing of frozen celery.

EFFECTIVE DATE: January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue SW., Washington, DC 20250–0247; fax (202) 690–1087; or e-mail *karen.kaufman@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables are maintained by USDA/AMS/Fruit and Vegetable Programs and may be obtained by writing to the above address or on the internet at: *http://www.ams.usda.gov/standards/standpfv.htm.*

AMS is establishing the U.S. Standards for Grades of Frozen Celery using the procedures that appear in part 36 of title 7 of the Code of Federal Regulations (7 CFR part 36).

Proposed by the Petitioner

The petitioner, a grower and a processor of celery, requested that USDA develop a standard for frozen celery to be used by the industry. The petitioner provided information on style, sample size and description to AMS to develop the standard. AMS visited the petitioner's facility to collect information on grades of frozen celery and how to ascertain the grade of a sample and of a lot.

AMS prepared a discussion draft of the frozen celery standard, and distributed copies for input to the petitioner, the American Frozen Food Institute (AFFI), and the National Food Processors Association (NFPA). Input from the above groups was used to develop the standard.

Proposed by Fruit and Vegetable Programs, AMS

The first notice proposing to create a new United States Standards for Grades of Frozen Celery was published based on the petition in the May 2, 2001 **Federal Register**. A second notice was published in the February 20, 2003 **Federal Register** (68 FR 8196) based on comments received from the first notice. AMS received three comments in response to the second notice. All of the responses were in favor of the new standard. These comments are available by accessing AMS's Home Page on the Internet at: *http://www.ams.usda.gov/fv/ppb.html.*

Based on recommendations from the commentors the following changes were made to the standard, add ''Bias sliced celery'' to Section 2.6681. Styles of frozen celery. (a) Sliced celery; changes to Table I—Allowances for Defects in Frozen Celery include the addition of ''bias sliced'' celery with ''sliced'' style; for blemished and seriously blemished units no unit larger than a ¼″, for insect damage no larger than ⅛″; for grades of ''sliced'' , ''bias'' and ''diced'' style: blemished Grade ''A'' maximum of 3% by weight, Grade ''B'' maximum of 4% by weight, seriously blemished Grade ''A'' maximum of 1% by weight, Grade ''B'' maximum of 2% by weight, for mechanical damage, crushed or broken units for Grade ''B'' no more than 3% by weight and ''sliced'' and ''bias'' style extraneous vegetable material allowed in Grade ''A'' one piece, and Grade ''B'' two pieces.

Accordingly, AMS is establishing the United States Standard for Grades of Frozen Celery. The U.S. Standards for Grades of Frozen Celery following the standard format for U.S. Grade Standards. AMS is establishing the definition of ''frozen celery'' and including ''sliced'', ''bias'' and ''diced'' as the style designations in the standard. Finally, this standard defines the quality factors that affect frozen celery and determine sample unit sizes for this commodity.

This standard establishes the grade levels ''A'', ''B'' and ''Substandard'' and assigns the corresponding score points for each level. The tolerance for each quality factor as defined for each grade level is established.

The grade of a sample unit of frozen celery will be ascertained by considering the factors of varietal characteristics flavor and odor, which are not scored; the ratings for the factors of color, defects, and character, which are scored; the total score; and the limiting rules which apply. This standard will provide a common language for trade, a means of measuring value in the marketing of frozen celery, and provide guidance in the effective utilization of frozen celery. The official grade of a lot of frozen celery covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Food Products (§ 52.1 to 52.83).

The U.S. Standards for Grades of Frozen Celery will become effective 30 days after publication of this notice in the **Federal Register.**

Authority: 7 U.S.C. 1621–1627.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30605 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–301]

United States Standards for Grades of Greenhouse Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the petition to revise the United States Standards for Grades of Greenhouse Tomatoes. At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has noted that the method for determining percentages of defects and size classifications for greenhouse tomatoes needs to be revised to stay in line with current marketing practices. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

DATES: Comments must be received by February 9, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240; fax (202)

720–8871, e-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address, or call (202) 720–2185; e-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION: At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Greenhouse Tomatoes for possible revision. These standards were last revised in 1966. Since that time, marketing and packaging practices have changed. The current standards state that the size of greenhouse tomatoes and the percentage of defects shall be determined by weight. Currently however, greenhouse tomatoes are packed and marketed in a variety of methods, typically based on size or count. Prior to undertaking detailed work to develop the proposed revised standards, AMS is soliciting comments on the possible revision of the standards for grades of greenhouse tomatoes and the probable impact on distributors, processors, and growers.

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards. Should AMS proceed with revising the standards, the proposed revision of the standards will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30602 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–302]

United States Standards for Grades of Sweet Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising an official grade standard, is soliciting comments on a possible revision to the United States Standards for Grades of Sweet Potatoes. At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has noted that the size requirements for sweet potatoes are complex and may be difficult to apply. Therefore, AMS is soliciting comments on the possible revision of the size requirements. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

DATES: Comments must be received by February 9, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov*.

Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; E-mail: *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

At a recent meeting of the Fruit and Vegetable Industry Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Sweet Potatoes for a possible revision. These standards were last revised in 1963. As a result, AMS identified the size requirements of the U.S. Extra No. 1 grade and the U.S. No. 1 grade for possible revision. Currently the U.S. Extra No. 1 grade requires that the length of a sweet potato be not less than 3 inches or more than 9 inches, the maximum diameter not to exceed 3¼ inches, the maximum weight not to exceed 18 ounces and unless otherwise specified, the minimum diameter not be less than 1¾ inches. The U.S. No. 1 grade requires the maximum diameter of a sweet potato not to exceed 3½ inches, the maximum weight not to exceed 20 ounces, the length be not less than 3 inches or more than 9 inches unless otherwise specified, and the minimum diameter not be less than 1¾ inches unless otherwise specified. These requirements are complex and may be difficult to apply. While these requirements may have reflected sweet potatoes sizes marketed in the past, but they need to be updated to reflect the marketing of sweet potatoes today. Therefore, AMS believes that a change to these requirements is warranted to better serve the industry. However, prior to undertaking detailed work to develop a proposed revision to the standard, AMS is soliciting comments on the possible revision to the standard and the probable impact on distributors, processors, and growers. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

This notice provides for a 60-day comment period for interested parties to comment on changes to the standard. Should AMS proceed with revising the standard, the proposed revision of the standard will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30601 Filed 12–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–806]

Stainless Steel Wire Rod From Sweden; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of antidumping duty order on stainless steel wire rod from Sweden.

SUMMARY: On August 1, 2003, the Department of Commerce (''the Department'') published the notice of initiation of a sunset review on stainless steel wire rod (''SSWR'') from Sweden. On the basis of notice of intent to participate and adequate substantive comments filed on behalf of domestic

interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited (120-day) review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Al-Saadawi or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–1930 or (202) 482–5050, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of a sunset review of the antidumping order on SSWR from Sweden pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[1] The Department received Notice of Intent to Participate on behalf of Carpenter Technology Corporation (''domestic interest parties''), within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. The domestic interested parties claimed interested party status under Section 771(9)(C) of the Act, as a U.S. producer of SSWR. We received a complete substantive response, in the sunset review, from the domestic interested parties, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). The domestic interested parties have been involved in this proceeding since its inception and are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to Section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department conducted an expedited, 120-day, review of this antidumping duty order.

Scope of Review

Stainless steel wire rod (SSWR) comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter.

Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of this review. The following proprietary grades of Kanthal AB are also excluded: Kanthal A–1, Kanthal AF, Kanthal A, Kanthal D, Kanthal DT, Alkrothal 720, and Nikrothal 40. The chemical makeup for the excluded grades is as follows:

SF20T
- Carbon—0.05 max
- Manganese—2.00 max
- Phosphorous—0.05 max
- Sulfur—0.15 max
- Silicon—1.00 max
- Chromium—19.00/21.00
- Molybdenum—1.50/2.50
- Lead—added (0.10/0.30)
- Tellurium—added (0.03 min)

K–M35FL
- Carbon—0.015 max
- Silicon—0.70/1.00
- Manganese—0.40 max
- Phosphorous—0.04 max
- Sulfur—0.03 max
- Nickel—0.30 max
- Chromium—12.50/14.00
- Lead—0.10/0.30
- Aluminum—0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive. This review cover all imports from all manufacturers, producers, and exporters of SSWR from Sweden.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/sunset,* under the heading ''December 2003.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from Sweden would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Swedish producers/ manufacturers/exporters	Weighted average-margin (percentage)
Fagersta Stainless AB	5.71
All Others	5.71

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

[1] *Initiation of Five-Year (Sunset) Reviews,* 68 FR 45219 (August 1, 2003).

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30624 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–820]

Stainless Steel Wire Rod From Italy; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of antidumping duty order on stainless steel wire rod from Italy.

SUMMARY: On August 1, 2003, the Department of Commerce (''the Department'') published the notice of initiation of a sunset review on stainless steel wire rod (''SSWR'') from Italy. On the basis of notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited (120-day) review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Ozlem Koray or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–3675 or (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of a sunset review of the antidumping order on SSWR from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[1] The Department received Notice of Intent to Participate on behalf of domestic interested party, Carpenter Technology Corporation (''Carpenter Technology''), within the deadline specified in section 351.218(d)(1)(I) of the *Sunset Regulations.* Carpenter Technology claimed interested party status under Section 771(9)(C) of the Act, as U.S. producers of a domestic like product. We received a complete substantive response, in the sunset review, from the domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(I). Carpenter Technology has been involved in this proceeding since its inception and are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department conducted expedited, 120-day, review of this antidumping duty order.

This review covers all imports from all manufacturers, producers, and exporters of SSWR from Italy except for Acciaierie Valbruna/Accierie de Bolazano SpA, who received a *de minimis* rate in the investigation and as a result were excluded from the order.

Scope of Review

SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of this review. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon—0.05 max
Manganese—2.00 max
Phosphorous—0.05 max
Sulfur—0.15 max
Silicon—1.00 max
Chromium—19.00/21.00
Molybdenum—1.50/2.50
Lead—added (0.10/0.30)
Tellurium—added (0.03 min)

K–M35FL

Carbon—0.015 max
Silicon—0.70/1.00
Manganese—0.40 max
Phosphorous—0.04 max
Sulfur—0.03 max
Nickel—0.30 max
Chromium—12.50/14.00
Lead—0.10/0.30
Aluminum—0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in this case by Carpenter Technology to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/sunset*, under the heading ''December 2003.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from Italy would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

[1] *Initiation of Five-Year (Sunset Reviews,* 68 FR 45219 (August 1, 2003).

Manufacturer/producer/exporter	Weighted average margin percentage
Cogne Acciai Speciali S.r.l	12.73
All Others	12.73

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary, Import Administration.

[FR Doc. 03–30626 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod From South Korea; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of antidumping duty order on stainless steel wire rod from South Korea.

SUMMARY: On August 1, 2003, the Department of Commerce (''the Department'') published the notice of initiation of a sunset review on stainless steel wire rod (''SSWR'') from South Korea. On the basis of notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited (120-day) review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Ozlem Koray or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3675 or (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of a sunset review of the antidumping order on SSWR from South Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[1] The Department received Notice of Intent to Participate on behalf of a domestic interested party, Carpenter Technology Corporation (''Carpenter Technology''), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations.* The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product. We received a complete substantive response, in the sunset review, from Carpenter Technology, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Carpenter Technology has been involved in this proceeding since its inception and are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department conducted an expedited, 120-day, review of this antidumping duty order.

Scope of Review

SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of this review. The chemical makeup for the excluded grades is as follows:

SF20T
- Carbon—0.05 max
- Manganese—2.00 max
- Phosphorous—0.05 max
- Sulfur—0.15 max
- Silicon—1.00 max
- Chromium—19.00/21.00
- Molybdenum—1.50/2.50
- Lead—added (0.10/0.30)
- Tellurium—added (0.03 min)

K–M35FL
- Carbon—0.015 max
- Silicon—0.70/1.00
- Manganese—0.40 max
- Phosphorous—0.04 max
- Sulfur—0.03 max
- Nickel—0.30 max
- Chromium—12.50/14.00
- Lead—0.10/0.30
- Aluminum—0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive. This review cover all imports from all manufacturers, producers, and exporters of SSWR from South Korea.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of

[1] *Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003).

dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/sunset,* under the heading ''December 2003.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from South Korea would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted average margin
Dongbang Special Steel Co., Ltd./Changwon Specialty Steel Co. Ltd./Pohang Iron and Steel Co., Ltd	5.77
Sammi Steel Co., Ltd	28.44
All Others	5.77

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary, Import Administration.

[FR Doc. 03–30627 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–843]

Stainless Steel Wire Rod from Japan; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order on Stainless Steel Wire Rod from Japan.

SUMMARY: On August 1, 2003, the Department of Commerce (''the Department'') published the notice of initiation of a sunset review on stainless steel wire rod (''SSWR'') from Japan. On the basis of notice of intent to participate and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, we have determined to conduct an expedited 120-day review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Alessandra Cortez or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–5925 or (202) 482–5050, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of a sunset review of the antidumping order on SSWR from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[1] The Department received a Notice of Intent to Participate on behalf a domestic interested party, Carpenter Technology Corporation (''Carpenter Technology''), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under Section 771(9)(C) of the Act, as a U.S. producer of a domestic like product. We received a complete substantive response, in the sunset review, from the domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Carpenter Technology has been involved in this proceeding since its inception and are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to Section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department has an conducted an expedited, 120-day review of this antidumping duty order.

Scope of Review

SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of this review. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon--0.05 max
Manganese--2.00 max
Phosphorous--0.05 max
Sulfur--0.15 max
Silicon--1.00 max
Chromium--19.00/21.00
Molybdenum--1.50/2.50
Lead--added (0.10/0.30)
Tellurium--added (0.03 min)

K-M35FL

Carbon--0.015 max

[1] Initiation of Five-Year (Sunset) Reviews, 68 FR 45219 (August 1, 2003)

Silicon--0.70/1.00
Manganese--0.40 max
Phosphorous--0.04 max
Sulfur--0.03 max
Nickel--0.30 max
Chromium--12.50/14.00
Lead--0.10/0.30
Aluminum--0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers all imports from all manufacturers, producers, and exporters of SSWR from Japan, except for Hitachi who received a de minimis rate in the investigation and as a result was excluded from the order.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/sunset, under the heading ''December 2003.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from Japan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted-Average Margin Percentage
Daido Steel Co., Ltd	34.21
Nippon Steel Corp	21.18
Sanyo Special Steel Co., Ltd	34.21
Sumitomo Electric Industries, Ltd	34.21
All Others	25.26

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30628 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583–828]

Stainless Steel Wire Rod from Taiwan; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order on Stainless Steel Wire Rod from Taiwan.

SUMMARY: On August 1, 2003, the Department of Commerce (''the Department'') published the notice of initiation of a sunset review on stainless steel wire rod (''SSWR'') from Taiwan. On the basis of notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we have determined to conduct an expedited, 120-day review. As a result of this review, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Alessandra Cortez or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–5925 or (202) 482–5050, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of a sunset review of the antidumping order on SSWR from Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[1] The Department received Notice of Intent to Participate on behalf of a domestic interested party, Carpenter Technology Corporation (''Carpenter Technology''), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Carpenter Technology claimed interested party status under Section 771(9)(C) of the Act, as a U.S. producer of a domestic like product. We received a complete substantive response, in the sunset review, from Carpenter Technology, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Carpenter Technology have been involved in this proceeding

[1] *Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003)

since its inception and are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to Section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department has conducted an expedited, 120-day review of this antidumping duty order.

Scope of Review

SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of this review. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon--0.05 max
Manganese--2.00 max
Phosphorous--0.05 max
Sulfur--0.15 max
Silicon--1.00 max
Chromium--19.00/21.00
Molybdenum--1.50/2.50
Lead--added (0.10/0.30)
Tellurium--added (0.03 min)

K-M35FL

Carbon--0.015 max
Silicon--0.70/1.00
Manganese--0.40 max
Phosphorous--0.04 max
Sulfur--0.03 max
Nickel--0.30 max
Chromium--12.50/14.00Lead--0.10/0.30
Aluminum--0.20/0.35

The products subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers all imports from all manufacturers, producers, and exporters of SSWR from Taiwan except for Yieh Hsing Enterprise Corp., Ltd., who received a *de minimis* rate in the investigation and as a result was excluded from the order.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/sunset*, under the heading ''December 2003.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from Taiwanwould be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted Average Margin Percentage
Walsin Cartech Specialty Stee	l8.29
Yieh Hsing Enterprise Corporation	Excluded [FN1]
All Others	8.29

[FN1] Yieh Hsing Enterprise Corp. received a *de minimis* rate in the investigation.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30629 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-469–807]

Stainless Steel Wire Rod from Spain; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order on Stainless Steel Wire Rod from Spain.

SUMMARY: On August 1, 2003, the Department of Commerce (''the Department'') published the notice of initiation of a sunset review of the antidumping duty order on stainless steel wire rod (''SSWR'') from Spain.[1] On the basis of notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we have determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled *Final Results of Review*.

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published the notice of initiation of the sunset review of the antidumping duty order on SSWR from Spain. *See Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003), in accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On August 15, 2003, the Department received a Notice of Intent to Participate on behalf of a domestic interested party, Carpenter Technology Corporation (''Carpenter Technology''), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Policy Bulletin*. Carpenter Technology claimed interested party status under section 771(9)(C) of the Act, as a U.S. producer of SSWR. Carpenter Technology states that it has been involved in this proceeding since its inception and remain committed to full participation in this sunset review.

We received a complete substantive response from Carpenter Technology on September 2, 2003, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested parties to this proceeding. As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, the Department determined to conduct an expedited, i.e., 120-day, review of this order.

This review covers imports from all known manufacturers and exporters of SSWR from Spain.

Scope of Review

SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or

descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of this review. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon--0.05 max
Manganese--2.00 max
Phosphorous--0.05 max
Sulfur--0.15 max
Silicon--1.00 max
Chromium--19.00/21.00
Molybdenum--1.50/2.50
Lead--added (0.10/0.30)

K-M35FL

Carbon--0.015 maxSilicon--0.70/1.00
Manganese--0.40 max
Phosphorous--0.04 max
Sulfur--0.03 max
Nickel--0.30 max
Chromium--12.50/14.00
Lead--0.10/0.30
Aluminum--0.20/0.35

The products subject to this antidumping duty order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/sunset*, under the heading ''December 2003.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty on SSWR from Spain would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturers/producers/exporters	Weighted-AverageMarginPercentage
Roldan, S.A.	4.73
All Others	4.73

[1] *Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003).

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30630 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–831]

Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and new shipper reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review for the administrative review and the new shipper reviews is November 1, 2001, through October 31, 2002. The reviews cover six manufacturers/exporters.

With respect to the administrative review, we preliminarily determine that Jinan Yipin Corporation, Ltd., has made sales in the United States at prices below normal value and Shandong Heze International Trade and Developing Company has made sales in the United States at prices not below normal value. With respect to the new shipper reviews, we preliminarily determine that Jining Trans-High Trading Co., Ltd., and Zhengzhou Harmoni Spice Co., Ltd., have made sales in the United States at prices not below normal value. Further, we preliminarily determine that Top Pearl Ltd. and Wo Hing (H.K.) Trading Co. are not entitled to separate rates and have assigned them the rate for the country-wide entity.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument.

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Mark Ross, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–1690 or (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 66612. On December 26, 2002, we published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (67 FR 78772) in which we initiated the administrative review of the antidumping duty order on fresh garlic from the PRC.

We published a notice of initiation of new shipper antidumping duty reviews for Jining Trans-High Trading Co., Ltd. (Trans-High), Zhengzhou Harmoni Spice Co., Ltd. (Harmoni), and Xiangcheng Yisheng Foodstuffs Co., Ltd., on January 6, 2003. *See Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China*, 68 FR 542.

On January 24, 2003, the petitioners (the Fresh Garlic Producers Association and its individual members) submitted a request for alignment of the new shipper and administrative reviews. On February 12, 21, and March 5, 2003, each respondent in the new shipper reviews responded in writing to the request for alignment, agreeing to waive the statutory time limits in the new shipper reviews. As all three of the respondents agreed to waive the time limits, we decided to grant the request for alignment of the reviews pursuant to 19 CFR 351.214(j)(3). *See* memorandum to the file from Jennifer Moats entitled ''Request Regarding Alignment of New Shipper and Administrative Reviews,'' dated March 10, 2003.

One company named in the notice of initiation for the administrative review, Fook Huat Tong Kee Pte., Ltd., had no exports or sales of the subject merchandise during the period of review and, consequently, we rescinded the review of this company. In addition, the review requests for Clipper Manufacturing Ltd., Huaiyang Hongda Dehydrated Vegetable Company, Golden Light Trading Company, Ltd., Good Fate International, Phil-Sino International Trading Inc., and Mai Xuan Fruitex Co., Ltd., were withdrawn subsequent to the initiation of the administrative review and, therefore, we rescinded the review of these six companies. *See Fresh Garlic From The People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 46580 (August 6, 2003).

On August 7, 2003, we extended the deadline for the issuance of the preliminary results of the administrative and new shipper reviews by 90 days, until October 31, 2003 (68 FR 47020).

On August 15, 2003, we issued supplemental questionnaires in which we requested information from the U.S. customers for the sales involved in the new shipper reviews of Trans-High and Harmoni. We received responses from Trans-High's and Harmoni's U.S. customers on August 29, 2003, and on September 5, 2003, respectively. As detailed in the memorandum from Brian Ellman to the File dated November 25, 2003, we have so far been unable to contact Trans-High's U.S. customer by telephone, facsimile, or Federal Express regarding its incomplete response. As such, we intend to continue to evaluate the information on the record with respect to Trans-High for the final results of review.

On September 26, 2003, the Department determined preliminarily that, based on the use of adverse facts available, the new shipper Xiangcheng Yisheng Foodstuffs Co., Ltd., sold subject merchandise to the United States at prices below normal value. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.*, 68 FR 55583 (September 26, 2003). On October 23, 2003, the Department extended the deadline for issuing the preliminary results for the other companies in these administrative and new shipper reviews until December 1, 2003. *See Fresh Garlic From the People's Republic of China: Notice of*

Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews, (68 FR 60640).

The petitioners have submitted recent pre-preliminary comments concerning Jinan Yipin. We continue to evaluate these comments and we will consider them for the final results of review.

Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (Customs) to that effect.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified information provided by certain respondents using standard verification procedures, including on-site inspection of the producers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (CRU). With respect to Shandong Heze International Trade and Developing Company (Shandong Heze), the verification took place recently and, therefore, the report is still pending completion and not yet on file. We will issue the report shortly after the issuance of these preliminary results of review and parties can comment on the applicability of the verification findings to our calculations. Following issuance of these preliminary results, we intend to verify the factors-of-production (FOP) information which Jinan Yipin has submitted.

Separate Rates

The Department has treated the PRC as a non-market-economy (NME) country in all past antidumping investigations (*see*, *e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000)) and in prior segments of this proceeding. A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (Sparklers), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

For the reasons discussed in the section below titled ''The PRC-Wide Rate and Use of Facts Otherwise Available'', we have determined that Top Pearl Ltd. (Top Pearl) and Wo Hing (H.K.) Trading Co. (Wo Hing) do not qualify for a separate rate and are deemed to be covered by the PRC-entity rate.

Jinan Yipin Corporation Ltd. (Jinan Yipin), Shandong Heze, Trans-High, and Harmoni provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed separate-rates analyses to determine whether each producer/exporter is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies.

Each respondent has placed on the record a number of documents to demonstrate absence of *de jure* control including the ''Foreign Trade Law of the People's Republic of China'' and the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations.'' The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. *See*, *e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination.

2. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments

of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Jinan Yipin reported that it is a limited-liability company owned by private investors. Shangdong Heze and Trans-High reported that they are limited-liability companies. Harmoni reported that it is a privately owned company. Each has asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; (5) each is responsible for financing its own losses. Jinan Yipin's, Shangdong Heze's, Trans-High's, and Harmoni's questionnaire responses do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record we found no information indicating the existence of government control. Consequently, we preliminarily determine that Jinan Yipin, Shangdong Heze, Trans-High, and Harmoni have met the criteria for the application of a separate rate.

The PRC-Wide Rate and Use of Facts Otherwise Available

All respondents were given the opportunity to respond to the Department's questionnaire. As explained above, we received questionnaire responses from Jinan Yipin, Shandong Heze, Trans-High, and Harmoni, and we have calculated a separate rate for each of these companies. The PRC-wide rate applies to all entries of subject merchandise except for entries from companies that have received their own rate based on the final results of a prior segment of this proceeding (*e.g.*, Jinan Yipin). As discussed below, Top Pearl and Wo Hing are appropriately considered part of the PRC-wide entity.

Top Pearl and Wo Hing did not respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, or (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Furthermore, under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information but also to provide a ''full explanation and suggested alternative forms.'' Because Top Pearl and Wo Hing did not respond to the questionnaire, we find that, in accordance with sections 776(a)(2)(A) and (B) of the Act, the use of total facts available is appropriate. *See, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the URAA, H. Doc. No. 103–316, at 870 (1994). Section 776(b) of the Act authorizes the Department to use as adverse facts-available information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

On December 30, 2002, the Department issued its antidumping duty questionnaire to Top Pearl and Wo Hing via Federal Express. On January 6, 2003, the questionnaire issued to Top Pearl was returned to the Department by Fed Ex because it had been unable to deliver the package. We were able to obtain a correct address for Top Pearl and re-issued the questionnaire on January 14, 2003. We confirmed that the questionnaire was signed for and received on January 16, 2003. *See* memorandum to file regarding questionnaire for Top Pearl, Ltd., dated January 15, 2003, and memorandum from Mark Ross, Program Manager, to Laurie Parkhill, Office Director, entitled ''Responses to Questionnaire'' dated June 27, 2003 (*Status of Questionnaire Responses Memorandum*). We also confirmed that Wo Hing signed for and received the questionnaire on January 2, 2003. *See Status of Questionnaire Responses Memorandum*. Because Top Pearl and Wo Hing did not provide responses to the Department's questionnaire, the Department is unable to determine Top Pearl's and Wo Hing's eligibility for a separate rate. Thus, Top Pearl and Wo Hing have not rebutted the presumption of government control and are presumed to be part of the PRC entity.

The PRC entity (including Top Pearl and Wo Hing) failed to cooperate to the best of its ability in this administrative review, thus making the use of an adverse inference appropriate. Therefore, in accordance with the Department's practice, as adverse facts available, we have preliminarily assigned to the PRC entity (including Top Pearl and Wo Hing) the PRC-entity rate of 376.67 percent.

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. Throughout the history of this proceeding, the highest rate ever calculated is 376.67 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic from the People's Republic of China*, 59 FR 49058, 49059 (September 26, 1994). The information contained in the petition was corroborated for the preliminary results of the first administrative review. *See Fresh Garlic from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 68229, 68230 (December 27, 1996). Further, it was corroborated in subsequent reviews to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002). Similarly, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof,*

from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.'' *See TRBs*, 61 FR at 57392. *See* also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate used is the rate currently applicable to Top Pearl, Wo Hing, and all exporters subject to the PRC-wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not relevant. Therefore, for all sales of subject merchandise exported by Top Pearl and Wo Hing, we have applied, as adverse facts available, the 376.67 percent margin from a prior administrative review of this order and have satisfied the corroboration requirements under section 776(c) of the Act. *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

With respect to Jinan Yipin, the use of adverse facts available is warranted because it has not provided information critical to the calculation of an antidumping duty margin and impeded the conduct of the administrative review by not providing correct and thorough responses to our questions, before, during, and following verification. These inadequacies relate to two issues: (1) whether Jinan Yipin reported some sales to an affiliated party as unaffiliated-party sales and (2) whether Jinan Yipin captured all of its indirect selling expenses on U.S. sales in its response.

We find that, pursuant to section 776(a)(2)(A) of the Act, Jinan Yipin withheld information concerning the relationship between American Yipin's (Jinan Yipin's U.S. affiliate) sales manager, Edward Lee, and one of its customers. As described in detail in the memorandum from Laurie Parkhill, Office Director, AD/CVD Enforcement 3, to Jeffrey May, Deputy Assistant Secretary, Import Administration, dated December 1, 2003 (*Jinan Yipin Facts-Available Memorandum*), the verification team requested information from Edward Lee and American Yipin several times but was given inadequate, incomplete, or incorrect responses. Although American Yipin finally provided answers to many of the questions which the Department requested, it did so only after the Department did a great deal of its own research and presented facts to American Yipin which contradicted earlier statements the company had made. Nonetheless, after all of these questions and responses, new and further issues pertaining to affiliations between affiliates of both American Yipin and the U.S. customer now exist on the record. Thus, with respect to section 776(a)(2)(C) of the Act, the inadequate responses we received throughout the administrative review from Jinan Yipin impeded our process significantly. Thus, pursuant to these provisions, the use of facts otherwise available is warranted in this case.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. In this administrative review, the Department issued its standard questionnaire and, in response to inadequate responses and information provided by Jinan Yipin, eventually it supplemented the record with three additional questionnaires. The Department also asked numerous questions during verification as new information came to light throughout the verification. Accordingly and pursuant to section 782(d) of the Act, the Department provided Jinan Yipin with numerous opportunities to remedy or explain deficiencies on the record.

Pursuant to section 776(b) of the Act, the Department has determined that the use of an adverse inference is warranted in this case. Jinan Yipin and its U.S. affiliate, American Yipin, did not act to the best of their abilities in providing the information necessary to conduct this administrative review. Indeed, we learned much of the information now on the record only during or after verification and we were thus unable to evaluate the information completely by the time of issuance of these preliminary results of review. Thus, absent the necessary information on the record and the respondents' repeated failure to act to the best of its ability to provide the information we need for our calculations and analysis, the application of partial adverse facts available is warranted for all of the transactions to Jinan Yipin's U.S. customer in question. We have selected a rate of 376.67 percent to apply to those transactions.

As discussed above, a number used as adverse facts available must be corroborated, pursuant to section 776(c) of the Act. The number is corroborated if it is found to be both reliable and relevant. To determine whether the rate of 376.67 percent is both a relevant and reliable rate to apply to Jinan Yipin's sales to the customer in question (in other words, whether the rate is indicative of the disparity in the respondent's pricing or has probative value), we examined individual U.S. sales made by Jinan Yipin to customers other than the customer in question in the current review and the dumping margins on those transactions. As a result of our analysis, we found sales in commercial quantities with dumping margins near or exceeding 376.67 percent. *See* the output of the margin program attached to the December 1, 2003, analysis memorandum for the preliminary results of review of Jinan Yipin. There is no information on the record that demonstrates that 376.67 percent rate is an inappropriate adverse facts-available rate for Jinan Yipin's sales involving the customer in question. Therefore, we consider the selected rate to be reliable for Jinan Yipin's sales to this customer and to reflect an appropriate adverse inference.

We also find that Jinan Yipin withheld certain information pertinent to the calculation of indirect selling expenses and, thus, the calculation of an antidumping margin. At verification, we found that Edward Lee and two other employees of American Yipin also worked for another company as well and that, for the first three months of American Yipin's operations in Westwego, Louisiana, these employees did not receive any compensation from American Yipin but were, however, paid by the other company consistently.

As discussed in detail in the *Jinan Yipin Facts-Available Memorandum*, where a respondent has failed to provide information we requested, pursuant to section 776(a)(2)(A) of the Act, we must rely on adverse facts available in determining the antidumping duty margin. Section

776(b) of the Act, provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. The Department has determined that the use of an adverse inference is warranted in this case because Jinan Yipin did not act to the best of its ability in providing the necessary or accurate information on indirect selling expenses.

With respect to Jinan Yipin's failure to provide critical information for the calculation of U.S. indirect selling expenses, as adverse facts available we were able to rely on a primary source of information. Because we can rely on a primary source of information, section 776(c) of the Act regarding corroboration of the information we use as adverse facts available does not apply. We have identified payroll-related expenses in the other company's 2002 Income Statement and added this amount to American Yipin's indirect expenses and calculated an indirect selling expense factor which we have applied to all of American Yipin sales, thus accounting for the additional indirect selling expenses applicable to U.S. sales of the subject merchandise. Use of this information about indirect selling expenses is adverse to the interests of Jinan Yipin because, had it cooperated to the best of its ability, the amount of indirect selling expenses we would have deducted from the constructed export price would have been less. Moreover, the use of this data is inherently reliable and reasonable because it is based on actual selling expenses incurred in support of the respondent's sales of the subject merchandise during the current period of review. *See* section 776(c) of the Act. For a detailed discussion of the application of partial adverse facts available, *please see* the *Jinan Yipin Facts-Available Memorandum*.

Export Price

In accordance with section 772(a) of the Act, we used the export-price methodology when the first sale to an unaffiliated purchaser was made outside the United States before importation of the merchandise into the United States. We calculated the export price based on prices from Shandong Heze and Trans-High to unaffiliated U.S. customers. We made deductions, where appropriate, from the gross unit price to account for movement expenses such as foreign inland freight, international freight, customs duties, and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight, were provided by NME companies, we valued those charges based on surrogate rates from India. *See* ''Memorandum to the File'' regarding the factors valuation for the preliminary results of the new shipper and administrative reviews (December 1, 2003) (*FOP Memorandum*).

Constructed Export Price

In accordance with section 772(b) of the Act, we used constructed-export-price methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated the constructed export price based on prices from Jinan Yipin and Harmoni to unaffiliated U.S. customers. We made deductions, where appropriate, from the gross unit price to account for movement expenses such as foreign inland freight, international freight, customs duties, and brokerage and handling. Because some movement expenses were provided by NME companies, we valued those charges based on surrogate rates from India. *See FOP Memorandum*.

For a more detailed explanation of the company-specific adjustments that we made in the calculation of the dumping margins for these preliminary results, *see* the company-specific preliminary results analysis memoranda, dated December 1, 2003, on file in the CRU, Room B-099.

Normal Value

1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Factor Valuations'' section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. *See* ''Memorandum to Laurie Parkhill'' regarding the request for a list of surrogate countries (May 30, 2003). In addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. We have used India as the surrogate country and, accordingly, have calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. We have obtained and relied upon publicly available information. *See* ''Memorandum to the File'' regarding the selection of a surrogate country (December 1, 2003).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review and a new shipper review, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used factors of production reported by the respondents for materials, energy, labor, and packing. We valued all the input factors using publicly available, published information, as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by the respondents for the period of review. To calculate normal value, we multiplied the reported per-unit factor quantities by publicly available surrogate values from India, with the exception of the surrogate value for ocean freight, which we obtained from an international freight company. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We calculated these freight costs based on the shortest reported distance from the domestic supplier to the factory and Indian

surrogate values. This adjustment is in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (CAFC 1997). For a detailed description of all the surrogate values used, *see* the FOP Memorandum.

For those Indian rupee values not contemporaneous with the period of review, we adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics*.

Surrogate-value data or sources to obtain such data were obtained from the petitioners, the respondents, and Departmental research.

Except as specified below, we valued raw material inputs using the weighted-average unit import values derived from the *World Trade Atlas*, provided by the Global Trade Information Services, Inc. The source of these values contemporaneous with the period of review, was the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry. We valued garlic seed based on pricing data from the *NHRDF News Letter*, published by India's National Horticultural Research and Development Foundation. We valued diesel fuel and electricity based on data from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (Third Quarter, 2003). We valued water using the averages of municipal water rates from Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (October 1997).

The respondents reported packing inputs consisting of mesh bags, cartons, plastic bands, tape, plastic jars, plastic jar lids, and metal clips. All of these inputs were valued using import data from the *World Trade Atlas* that covered the period of review.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate that appears on the website for Import Administration (*http://ia.ita.doc.gov/wages/corrected00wages/corrected00wages.htm*). The source of the wage-rate data for the Import Administration's website is the International Labor Organization's *Yearbook of Labour Statistics 2001* (Geneva, 2001), chapter 5B: Wages in Manufacturing.

The respondents claimed an adjustment for revenue earned on the sale of garlic sprouts. We find that sprouts are a by-product of garlic and deducted an offset amount from normal value. As a surrogate value for the sale of sprouts in the PRC, we used an average of Indian wholesale prices for green onions published by the Azadpur Agricultural Produce Marketing Committee.

We valued the truck rate based on an average of truck rates that were published in the Indian publication *Chemical Weekly* during the period of review. We valued foreign brokerage and handling charges based on a value calculated for the LTFV investigation of certain hot-rolled carbon steel flat products from India. For ocean freight, we obtained rate quotes from Maersk Sealand (*www.maersksealand.com*) dating from the period of review for the movement of refrigerated containers from the PRC to the east and west coasts of the United States. We used these quotes to calculate a surrogate freight rate for each coast.

As discussed in the *FOP Memorandum*, the respondents and the petitioners submitted the publicly available financial information of six companies. We concluded that the financial information of four of the companies reflected costs incurred for highly processed food products and that this processing was not comparable with the operations of the respondent garlic companies. We concluded that the financial information for a fifth company was not representative of the financial experiences of the respondent companies because this company did not grow the agricultural products that it sold and, in some cases, performed no processing on these products. We found that the financial information of a tea company was most representative of the financial experiences of the respondent companies because it produced and processed a product that was not highly processed or preserved prior to its sale. Thus, to value factory overhead, selling, general and administrative expenses, and profit, we used rates based on data taken from the 2001/2002 financial statements of Parry Agro Industries Limited.

Preliminary Results of the Reviews

For the administrative review, we preliminarily determine that the following dumping margins exist for the period November 1, 2001, through October 31, 2002:

Exporter	Weighted-average percentage margin
Jinan Yipin Corporation, Ltd.	168.06
Shandong Heze International Trade and Developing Company	0.00
PRC-wide rate (including Top Pearl and Wo Hing)	376.67

For the new shipper reviews we preliminarily determine that the following dumping margins exist for the period November 1, 2001, through October 31, 2002:

Producer and Exporter Combinations	Weighted-average percentage margin
Grown By Jining Yun Feng Agriculture Products Co., Ltd.and Exported By Jining Trans-High Trading Co., Ltd.	0.00
Grown and Exported By Zhengzhou Harmoni Spice Co., Ltd.	0.00

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than one week after the issuance of the Department's last verification report in these reviews. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs are due no later than five days after the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with 19 CFR 351.310, we will hold a public hearing to afford interested parties an opportunity to

comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If we receive a request for a hearing, we plan to hold the hearing three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of the preliminary results of these reviews in the **Federal Register**. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

The Department will publish the final results of these reviews, including its analysis of issues raised in any case or rebuttal briefs, not later than 120 days after the date of publication of this notice. *See* section 751(a)(3) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of this administrative review and the new shipper reviews, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs upon completion of these reviews. If these preliminary results are adopted in our final results of review, we will direct Customs to assess the resulting rates against the entered customs value for the subject merchandise on each of the entries of each exporters' importer/customer during the period of review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of the administrative review and new shipper reviews for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Jinan Yipin or Shangdong Heze, grown by Jining Yun Feng Agriculture Products Co., Ltd., and exported by Trans-High, or grown and exported by Zhengzhou Harmoni Spice Co., Ltd., the cash-deposit rate will be that established in the final results of these reviews; (2) for all other subject merchandise exported by Trans-High or Harmoni but not grown by Jining Yun Feng Agriculture Products Co., Ltd., or Zhengzhou Harmoni Spice Co., Ltd., respectively, the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 376.67 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of these reviews. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of reviews in accordance with sections 751(a)(2)(B)(iv), 751(a)(3), and 777(i) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30625 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100903A]

Taking and Importing Marine Mammals; Taking Marine MammalsIncidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to BP Exploration (Alaska), Inc. (BPXA) to take marine mammals incidental to the production of offshore oil and gas at the Northstar development in the Beaufort Sea off Alaska.

DATES: This LOA is effective from December 4, 2003, through December 3, 2004.

ADDRESSES: A copy of BPXA's letter, a list of monitoring reports, and/or the LOA may be obtained by writing to the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055, ext. 128, or Bradley Smith (907) 271–5006.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) of marine mammals for subsistence uses. In addition, NMFS must prescribe regulations setting forth the permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to construction and operation of the offshore oil and gas facility at Northstar in the Beaufort Sea were published and made effective on May 25, 2000 (65 FR 34014), and remain in effect until May 25, 2005. These regulations include mitigation, monitoring, and reporting requirements.

Summary of Request

On September 30, 2003, NMFS received a request from BPXA for a renewal of an LOA issued on September 18, 2000 (65 FR 58265, September 28,2000) and reissued on December 14, 2001 (66 FR 65923, December 21, 2001), and December 9, 2002 (67 FR 77750, December 19, 2002) for the taking of marine mammals incidental to oil production operations at Northstar, under section 101(a)(5)(A) of the MMPA. This request (BPXA, 2003) contains information in compliance with 50 CFR 216.209, which updates information provided in BPXA's original application for takings incidental to construction and operations at Northstar. The current LOA for the taking of marine mammals incidental to oil production at the Northstar facility will expire on December 9, 2003.

Impacts on marine mammals may occur through noise from barge, helicopter traffic, drilling, and other noise sources on the island facility. Impacts may also result if there is an oil spill resulting from production. While noise impacts on marine mammals will be low (activities on Northstar Island will make less noise than that from standard jack-up rigs, the concrete island drilling structure, or seismic activity), bowhead whales will likely hear the noise at distances up to 10 km (6.2 mi) from the island. In addition, there may be some harassment, injury, or mortality of ringed seals during winter ice-road construction. Noise impacts may result in Level B harassment of approximately 765 bowheads (i.e., the LOA authorizes up to 765 bowheads annually, with a maximum of 1,533 in 2 out of 5 seasons, and a total of 3,585 in 5 years), 5 gray whales and 91 beluga whales. Year-round operations at Northstar may result in the harassment of up to approximately 191 ringed seals, 10 bearded seals, and 5 spotted seals being harassed and the incidental mortality of up to 5 ringed seal pups. No take is authorized for an oil spill. NMFS and BPXA believe that these estimates remain conservative since, for example, monitoring between November, 2001 and October, 2002 indicate that approximately 110 ringed seals, 1 bearded seal and 10–20 beluga whales were present in the area and potentially may have been affected (Moulton *et al.*, 2003). MacLean and Williams (2003) and Moulton *et al.* (2003) indicate that Northstar production probably had little or no effect on most of the seals and no seals were injured or killed by activities along the ice road or operations at Northstar Island during the late 2002 through early 2003 ice-covered season.

The best estimates of the numbers of bowhead whales displaced offshore by 2 km (1.2 mi) or more during the autumn migrations of 2001 and 2002 were approximately 13 and 19 respectively (Moulton *et al.*, 2003). Presumably, a larger number of bowheads was displaced by less than 2 km (1.2 mi), but current monitoring methods are not capable of quantifying displacement over distances shorter than 2 km (BPXA, 2003). These estimates are based on acoustic monitoring of bowhead whales passing Northstar in the fall, 2001 and 2002 (Greene *et al.*, 2002, 2003). It is possible that the apparent offshore deflection of a small number of bowheads was, at least in part, attributable to a change in calling behavior rather than an actual deflection (BPXA, 2003).

As oil spills are highly unlikely, impacts on marine mammals from an oil spill are also unlikely to take place. However, in order to mitigate the potential for impacts on bowheads and the subsistence use of bowheads, BPXA will not drill into oil-bearing strata during periods of open water or broken ice, essentially the time period between June 13 and ending with the presence of 18 inches of continuous ice cover for one-half mile in all directions. This mitigation is warranted because oil spill cleanup methods are currently inadequate. Additional mitigation has been proposed by BPXA to the North Slope Borough native community to ensure that, in the event that an oil spill does occur, it will not have an unmitigable adverse impact on the subsistence use of the bowhead whale.

Monitoring and Reporting

Monitoring and reporting requirements are contained in the Northstar regulations (50 CFR 216.206) and described on May 25, 2000 (65 FR 34014). Additional information was provided on December 21, 2001 (66 FR 65923) when NMFS issued an LOA to BPXA for oil production at Northstar. Monitoring reports are submitted annually as required by the regulations and the LOA and plans and reports are peer-reviewed as required by the MMPA and regulations. A list of these reports is available upon request (see **ADDRESSES**). In June, 2003, a peer-review meeting was held in Seattle, WA. Participants at that meeting recommended that the future characteristics of the project be reviewed in early- to mid–2004 by a technical committee, which might be constituted and convened under the auspices of the North Slope Borough's Science Advisory Committee. BPXA plans to continue monitoring in 2003/2004 as suggested by the Seattle peer-review panel and accepted by NMFS.

Determinations

Accordingly, NMFS issued an LOA to BPXA on December 4, 2003, authorizing the taking of marine mammals incidental to oil production operations at the Northstar offshore oil and gas facility in state and federal waters in the U.S. Beaufort Sea. Issuance is based on findings, described in the preamble to the final rule (65 FR 34014, May 25, 2000), that the activities described in the LOA will result in the taking of no more than small numbers of bowhead whales, beluga whales, ringed seals, and, possibly California gray whales, bearded seals and spotted seals and that the total taking will have a negligible impact on these marine mammal stocks and would not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. NMFS also prescribed the means for effecting the least practicable adverse impact on these stocks. As the results from the monitoring program carried out since 1999 have not indicated that the determinations made in 2000 and 2001 were in error, nor that estimated levels of incidental harassment have been exceeded, and as the activity that was reviewed in 2001 (oil production activities) has not changed, these determinations remain valid.

Dated: December 4, 2003.

Stephen L. Leathery,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30609 Filed 12–9–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITIES FUTURE TRADING COMMISSION

Sunshine Act Meetings

AGENCY: Commodity Futures Trading

TIME AND DATE: 1 p.m., Wednesday, December 17, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hold a hearing to receive testimony from industry participants relating to the Commission's consideration of the application of U.S. Furtures Exchange, LLC, for contract market designation.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100 or *http://www.cftc.gov.*

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–30712 Filed 12–8–03; 1:07 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–2]

Daisy Manufacturing Company, Provisional Acceptance of Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission publishes in the **Federal Register** settlements that it provisionally accepts under the Consumer Product Safety Act, in accordance with 16 CFR. 1115.20. Published below is a provisionally-accepted Settlement Agreement with Daisy Manufacturing Co., Inc. Referenced exhibits are available at the Office of the Secretary or at *http://www.cpsc.gov.*

DATE: Any interested person may request the Commission not to accept this agreement by December 26, 2003.

ADDRESS: Send written requests to CPSC Docket No. 02–2, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7923; e-mail: *tstevenson@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Consent Agreement and Order appears below.

Consent Agreement and Order

1. This Consent Agreement and Order is a settlement proposal by Daisy Manufacturing Company (hereinafter ''Respondent'' or ''Daisy'') pursuant to provisions set forth in 16 CFR 1025.26. It proposes a compromise resolution of the matter described herein, without a hearing or a determination of issues of law and fact.

2. Respondent Daisy Manufacturing Company is a corporation organized and existing under the laws of the State of Delaware. Its office is located at 400 West Stribling Drive, Rogers, Arkansas 72756. Respondent is a manufacturer of Daisy brand airguns and Powerline airguns.

The Complaint

3. A description of the alleged hazards, as set forth in the complaint is attached hereto as Exhibit A.

The Position of Respondent

4. Respondent denies all of the staff's allegations as set forth in the complaint as set forth in the Answer attached hereto as Exhibit B.

5. Respondent denies that the airguns described in the complaint contain a defect which creates or could create a substantial product hazard under section 15 of the CPSA, 15 U.S.C. 2064 and section 15 of the FHSA, 15 U.S.C. 1274.

The Proposed Settlement

6. Respondent admits all of the jurisdictional facts as set forth in the complaint herein.

7. Upon final acceptance of this Consent Agreement by the Commission and the issuance of the Final Order herein, Respondent knowingly, voluntarily and expressly waives any rights it may have in this matter (1) To an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the CPSA and FHSA, as alleged, (4) to a statement of findings of fact and conclusions of law, and all further procedural steps and all rights to seek judicial review or otherwise to contest the validity of the Commission Order approving this Consent Agreement and (5) to any claims under the Equal Access to Justice Act.

8. The allegations of the complaint herein are resolved by this settlement consisting of a Consent Agreement and Order.

9. This Consent Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission, and settles any claim raised in the complaint by the Commission under Section 15(a) and (d) of the CPSA, and under Section 15 of the FHSA.

10. Upon provisional acceptance of this Consent Agreement and Order by the Commission, this Consent Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1115.20(b).

11. The Commission and Respondent propose to take the following action to settle this proceeding:

A. The following issues raised by the complaint in this proceeding, namely:

(i) The possibility of uniform industry standards for loading and feeding of BB's in all multishot airguns to insure that an airgun, when operated in accordance with the manufacturer's operating instructions, will load, feed or fire properly.

(ii) What is the appropriate age for intended users of airguns that fire projectiles at more than 350 feet per second? (The parties recognize that the present standard is 16 years of age.)

shall be submitted for resolution to ASTM Subcommittee F15.06 for the purpose of consideration and determination, in the sole discretion of the Subcommittee, of the extent to which, if at all, they shall be addressed in the voluntary standards ASTM F589 and F590.

The remaining allegations in the complaint are withdrawn and resolved.

B. Respondent will undertake an intensive campaign to instruct users in the safe handling and use of its airguns, at its sole cost and expense during each of the next five (5) years, under the title ''Take Aim At Safety''. The campaign will include:

(i) a comprehensive media advertising effort titled ''Take Aim at Safety''. It will be conducted in each year, which began in 2002/2003, for five (5) years, at a cost to Respondent of in excess of $300,000 per year, for a total of $1,500,000. The campaign is described in detail in Exhibit C annexed hereto.

(ii) Daisy will promote safety by the publication and distribution of ten important safety rules, which, if followed, would eliminate every incident, injury or death associated with Daisy's high velocity airguns. Consumers will be encouraged to visit Daisy's Web site to learn Daisy's ten shooting safety rules and earn a safety certificate. They will be eligible to enter a contest to win a VIP tour of the USA Shooting Team Training facility in Colorado Springs, Colorado, annexed as Exhibit D. Each participant will receive a free copy of Daisy's shooting safety rules.

(iii) A sample ad, to be placed in trade and consumer publications, is annexed as Exhibit E.

(iv) Respondent will apply a ''Take Aim At Safety'' label to the face of all Daisy brand and Powerline brand long gun packaging. The objectives, audiences, and strategies of the media and packaging campaign to be conducted by Respondent is broadly outlined in Exhibit F.

(v) In February 2004 and in each of the four succeeding years thereafter, Daisy will advise the U.S. Consumer Product Safety Commission in writing

of the extent to which the Daisy ''Take Aim At Safety'' campaign was conducted for the preceding year in the same detail as above set forth.

(vi) *Manufacture.* Respondent agrees to manufacture the Model 856 Powerline Airgun with the same single pellet ammunition and feed system as currently being manufactured.

(vii) *Tape Around Airgun Boxes.* Respondent will incorporate a tape band 1½ to 2 inches wide around the Model 856 and 880 gun boxes which will have a repeating message on the pre-printed tape, which will include the ''Take Aim at Safety'' logo and state:

Warning: This Gun is for Ages 16 and Over. Adult Supervision Required. Careless Use or Misuse of this Gun May Kill Someone''

The tape would have to be cut through, in addition to industrial staples to open the box. This would increase the likelihood that the consumer reads the warning.

(viii) *Hang Tag, Zip Tie or Sticker.* A zip tie is placed over the pumping mechanism of the gun, which must be cut through to use the gun. A hang tag will be attached to the zip tie and will state:

Warning: Always treat this gun as if it is loaded, whether you think it is loaded or not. Even if the gun fails to fire a BB or Pellet one or more times, do not assume it is unloaded. Any airgun may fail to fire for a variety of reasons. Never point the gun in an unsafe direction or at another person.

In lieu of a zip tie or hang tag, a sticker may be replaced on the product featuring the same warning.

(ix) *Poster, Sticker, Counter Card, or Video for Retailers.* For a period of five (5) years, an 8½ X 11 poster, sticker, counter card or video will be sent to retailers for posting during the Christmas season. The poster will contain the 10 Shooting Safety Rules and alert users to free training programs. Take Aim at Safety—Learn and Practice 10 Shooting Safety Rules. Airguns Are Real Guns, Not Toys. Only Use Age Appropriate Airguns. You or Others Could Be Seriously Injured or Killed If These Rules Are Not Followed.

1. *Always Keep the Muzzle Pointed in Safe Direction.* There are several safe ''carries'' depending on the situation. Never allow the muzzle to point in the direction of a person.

2. *Treat Every Gun as if it Were Loaded.* You can never be positive that you were the last person to handle the gun. Never take anyone's word about whether or not a gun is loaded. Always check a gun to see if it is loaded when removed from storage or received from another person. Even if you have fired an airgun one or more times and no pellet or BB was expelled from the barrel, it does not mean that the magazine of gun is empty of ammunition. Any airgun can fail to feed for any number of reasons. Continue to treat the airgun as loaded and ready to fire. *Always treat a gun as if it is loaded even if you know it isn't.*

3. *Only Load or Cock a Gun When You Are Shooting.* A loaded gun has no place in your home or other public place.

4. *Check Your Target and Beyond Your Target.* Be sure all persons are well clear of the target area before you shoot. Check behind and beyond your target to be certain you have a safe backstop and that no person or property could be endangered.

5. *Anyone Shooting or Near a Shooter Should Wear Shooting Glasses.* Also, all other persons should remain behind the shooter.

6. *Never Climb or Jump with a Gun.* You can't control the direction of the muzzle if you stumble or fall. You should safely lay the gun down or hand it to a companion while you climb or jump over anything.

7. *Avoid Ricochet.* Never shoot at a flat hard surface or at the surface of water. Ammunition can ricochet off of water just like a skipped rock.

8. *Keep the Muzzle Clear.* Never let anything obstruct the muzzle of a gun. Don't allow the muzzle to come in contact with the ground.

9. *Guns Not in Use Should Always Be Unloaded.* Keeping guns unloaded when not in use is critical to the safety of you and others. When you are finished shooting, put the trigger safety in the ''on'' position and unload the gun. Store guns so that they are inaccessible to untrained shooters and store ammunition separately from the gun.

10. *Respect Other People's Property.* Whether you're target shooting or hunting, if you're a guest on others' land, you should leave it exactly as you found it.

(x) *Free Training.* Respondent will provide an enclosure in the package and notation on the retail poster, sticker or counter card alerting users as to the availability of free training at their local Jaycee or shooting organization and a toll free 800 number for the dissemination of such information and will report progress to the Commission.

(xi) *BB Package.* An insert or package label shall be added to all boxes of BBs alerting the consumers that (1) Always point the gun in a safe direction; (2) Always treat every gun as if it were loaded; (3) Any gun may fail to load, feed or fire a BB for a variety of reasons. Even if the gun fails to fire a BB one or more times, do not assume it is unloaded; (4) A BB can seriously injure or kill you or other humans if it is fired in an unsafe direction; (5) Shoot safely.

12. Upon final acceptance by the Commission of this Consent Agreement an Order, the Commission shall issue that attached Order incorporated herein by reference.

13. Agreements, understandings, representations or interpretations made outside this Consent Agreement and Order may not be used to vary or contradict its terms.

14. This Consent Agreement in no way constitutes an admission of liability of any kind and Respondent has disputed and continues to dispute the allegations made in the complaint of the Consumer Product Safety Commission. Pursuant to Federal Rules of Evidence 403 and applicable case law, it is the parties' intent and they agree that the Consent Agreement and the action itself is not a finding of liability of any kind and not admissible as evidence for any purpose in any proceeding or in any action in state or federal courts.

15. The provisions of this Consent Agreement and Order shall apply to Respondent and Commission and each of their successors and assigns.

Dated: *November 14, 2003.*

Respondent: Daisy Manufacturing Company.
By: (signed by) William M. Griffin, III,
400 West Stribling Drive, Rogers, AR 72756.

Dated: December 3, 2003.

Consumer Product Safety Commission
By: (signed by) Patricia Semple,
4330 East West Highway, Bethesda, Maryland 20814.

Upon consideration of the Consent Agreement submitted by Respondent Daisy Manufacturing Company, Inc., (hereinafter ''Respondent''), a corporation, and the Consumer Product Safety Commission (''Commission''), having jurisdiction over the subject matter and Respondent; and it appearing that the Consent Agreement and Order is in the public interest; It is ordered, that the Consent Agreement be and hereby is accepted by Order of the Commission.[1]

For the Commission.

[1] Chairman Stratton and Commissioner Gall voted to accept the proposed Offer of Settlement. Commissioner Moore voted to reject the proposed Offer of Settlement.

Dated: December 4, 2003.

Todd A. Stevenson,

Secretary.

[FR Doc. 03–30555 Filed 12–9–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 9, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Special Contractor Operations Office (SCOO) of the TRICARE Management Activity, 16401 East CentreTech Parkway, Aurora, CO 80011–9043, ATTN: Major Shannon Lynch.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call SCOO Dental Contracts at 303–676–3496.

Title; Associated Form; and OMB Number: TRICARE Retiree Dental Program (TRDP) Enrollment Application; OMB Number 0720–0015.

Needs and Uses: The information collection requirement is necessary to provide the TRDP contractor with the information required to enroll eligible beneficiaries in the TRDP.

Affected Public: (DoD personnel and their families who are eligible for the TRDP).

Annual Burden Hours: 0.15: NOTE this form is completed on initial application only.

Number of Respondents: 50,000/year.

Responses per Respondent: 1.

Average Burden per Response: 9 minutes.

Frequency: Once on initial application for enrollment.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are those believing they are eligible for the TRICARE Retiree Dental program and who wish to join the TRDP. Eligibles include:

- Members of the Uniformed Services entitled to retired pay, including those aged 65 and over, and their eligible family members
- Members of the Retired Reserve/Retired Guard entitled to retired pay, but is under age 60, and their family members
- All eligible surviving spouses or eligible children
- A spouse and/or eligible child(ren) of certain non-enrolled members
- Medal of Honor Recipients and their eligible family members

The form is the mechanism utilized by the TRDP contractor (Delta Dental) to enroll eligible DoD personnel in the TRDP. Without the form, the contractor is unable to process enrollment applications and enroll eligible beneficiaries.

Dated: December 1, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–30548 Filed 12–9–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces a proposed information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 9, 2004.

ADDRESSES: Written comments and recommendations on the continuing information collection should be sent to the Senior Investigator, DoD-wise Surveillance for Potential Long-Term Adverse Events Associated with Smallpox Vaccination: Hospitalizations and Self-Reported Outcomes, Naval Health Research Center, DoD Center for Deployment Health Research, PO Box 85122, San Diego CA 92186–5122.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection, please write to the above address or contact Timothy S. Wells, Lt Col, USAF BSC, by calling (619) 553–7522 or e-mail at *Wells@NHRC.NAVY.MIL.*

Title, Associated Form and OMB Number: Prospective Studies of U.S. Military Forces: DoD-wise Surveillance for Potential Long-Term Adverse Events Associated with smallpox Vaccination: Hospitalizations and Self-Reported Outcomes.

Needs and Uses: DoD-wide Surveillance for Potential Long-Term Adverse Events Associated with Smallpox Vaccination: Hospitalizations and Self-Reported Outcomes, a historical prospective study of U.S. military forces, responds to recent recommendations from Congress and the Institute of Medicine to systematically monitor and evaluate potential long-term health consequences of exposure to the smallpox vaccine ''Dryvax®''.

Affected Public: Individuals.

Annual Burden Hours: 5000 participants × 45 minutes per questionnaire = 3750 hours.

Number of Respondents: 5000 subjects comprised or current and former regular active duty and activated reservists.

Responses per Respondent: 1.

Average Burden per Response: 45 minutes.

Frequency: Once time, cross-sectional.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This cross-sectional postal survey is nested within an IRB-approved historical prospective epidemiologic study of DoD medical records designed to ascertain potential long-term deleterious effects of exposure to the smallpox vaccine. The postal survey will systematically collect self-reported demographic, health and exposure data from a randomly selected subset of the US military population. Half of those surveyed will have been immunized with the smallpox vaccine and half will not. Objective DoD healthcare utilization data will already have been collected for all survey subjects. The purpose of the survey will be to determine whether health problems exist among service members that are not visible to the DoD medical treatment system, and further, whether such problems may be related to exposure to the smallpox vaccine. Eligible respondents of this survey are individuals who were included in the historical prospective study and have verifiable mailing addresses.

Dated: December 1, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30549 Filed 12–9–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Designation of Local Redevelopment Authority for Naval Station Roosevelt Roads Military Reservation

AGENCY: Office of Economic Adjustment, DoD.

ACTION: Notice.

SUMMARY: Section § 8132 of Public Law 108–87, Department of Defense Appropriations Act, 2004, September 30, 2003, directs the Secretary of the Navy to close naval Station Roosevelt Roads, Puerto Rico, no later than 6 months after enactment. This notice provides the point of contact, address, and telephone number for the Local Redevelopment Authority (LRA) responsible for developing the redevelopment plan for the Naval Station Roosevelt Roads Military Reservation, Ceiba, Puerto Rico. Representatives of the Commonwealth, local governments, and homeless providers intersted in reuse of the installation should contact the organization listed. The following information will be published in a newspaper of general circulation in the communities in the vicinity of Naval Station Roosevelt Roads.

Installation Name: Naval Station Roosevelt Roads Military Reservation.

LRA Name: Puerto Rico Department of Economic Development and Commerce.

Point of Contact: Honorable Milton Segarro, Secretary.

Address: 355 F.D. Roosevelt Avenue, Suite 404, Hato Rey, PR 00918.

Phone: (787) 758–4747.

EFFECTIVE DATE: November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustmnet, 400 Army Navy Drive, Suite 200, Arlington, VA 22202; telephone (703) 604–6020.

Dated: December 1, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30547 Filed 12–9–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 9, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the follwing: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Angela C. Arrington,

Leader, Regulatory Information Management Group Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: National Postsecondary Student Aid Study: 2004.

Frequency: One time.

Affected Public: Individuals or household; businesses or other for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 103,431.

Burden Hours: 43,096.

Abstract: The 2004 National Postsecondary Student Aid Study is being conducted to meet the continuing need for national-level data about significant financial aid issues for students enrolling in postsecondary education. Information about financial aid policies and postsecondary affordability is critical to policymakers who determine the need analysis formulas for Pell Grants, maximum amounts for student loans and other need-based federal programs, and estimate the continuing and future burden that ensuring federal aid places on the Federal Government. For the first time this study will also collect representative data on state aid and tuition policies which have been previously unavailable at the student level. This clearance request covers full-scale activities for the student interview phase of the study. This interview will collect information on background, program of study, enrollment status, federal aid amounts, other types of aid, tuition, school-related expenses, student and parent finances, student employment, credit card usage, and educational expectations.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the

''Browse Pending Collections'' link and by clicking on link number 2417. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30545 Filed 12–9–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from July 1, 2003, through September 30, 2003.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education (Department) of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507 (press 3).

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from July 1, 2003, through September 30, 2003.

Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602—Definitions

Topic Addressed: Special Education and Related Services

- Letters dated August 22, 2003, to National School Transportation Association Regulatory Liaison Robin L. Leeds and National Association for Pupil Transportation Executive Director Michael J. Martin, regarding the obligations of local educational agencies (LEAs) under Part B of the IDEA toward related service providers, including transportation providers.
- OSEP memorandum 03–10 dated August 22, 2003, to State Directors of Special Education, regarding how to ensure safe and appropriate transportation for children with disabilities.

Section 603—Office of Special Education Programs

Topic Addressed: Responsibilities of the Office of Special Education Programs

- Letter dated August 15, 2003, to individual (personally identifiable information redacted), clarifying that Part B of the IDEA does not provide for the Office of Special Education Programs' review of individual State-level complaint decisions or due process hearings, clarifying the procedures for requesting and amending school records, and clarifying the Department's responsibility to monitor a State's compliance with the IDEA.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Distribution of Funds

- OSEP memorandum 08–03 [sic] dated July 1, 2003, regarding implementation of the funding formula and funding formula distributions under section 611 of Part B of the IDEA and requesting that the States sign an Assurance Statement attesting to the accuracy of their funding formula distributions.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

- Letter dated August 19, 2003, to Children's Advocacy Network of Florida Founder Beth Davis-Wellington, regarding: (1) The role of the individualized education program (IEP) team in implementing the State's policy for retention or promotion of students with disabilities, (2) the establishment of proficiency standards for a regular high school diploma as they relate to children with disabilities and the IDEA requirements; and (3) the timing of initial evaluations for students with disabilities.

Topic Addressed: Free Appropriate Public Education for Eligible Youth With Disabilities Incarcerated in Adult Prisons

- Letter dated August 19, 2003, to Vermont Department of Education Legal Counsel Geoffrey A. Yudien, clarifying that (1) The provisions in 20 U.S.C. 1414(d)(6) and 34 CFR 300.311(c)(1) apply to post-conviction incarcerations; (2) to the extent consistent with the age ranges established under State law, States and LEAs must include in their child find systems those incarcerated youth who would be eligible to receive a free appropriate public education (FAPE) and who do not fall into the exception to the FAPE requirement; (3) individuals in the Federal correctional system fall under the jurisdiction of the Federal Bureau of Prisons (BOP) and the IDEA makes no specific provision for funding educational services through the BOP; and (4) under Part B of the IDEA, if a youth with disabilities is referred or placed by the State into an out-of-State facility, the referring State is generally responsible for ensuring that FAPE is available during the course of the youth's placement in that facility.

Topic Addressed: Procedural Safeguards

- Letter dated September 9, 2003, to North Dakota State Director of Special Education Robert Rutten, clarifying that it is not inconsistent with the State complaint procedures required by 34 CFR 300.660–300.662 for a complainant to have an advocate present during an interview or for the complaint investigator to send a copy of the issues to be investigated to an advocate if requested to do so by the complainant.

Topic Addressed: Least Restrictive Environment

• Letter dated July 23, 2003, to individual (personally identifiable information redacted), clarifying that neither the IDEA nor its implementing regulations define the term ''regular classes'' nor do they limit the number, or percentage, of students with disabilities that may be placed into a specific regular classroom in order to provide FAPE in the least restrictive environment, consistent with the requirements of 34 CFR 300.550–300.556.

• Letter dated July 1, 2003, to individual (personally identifiable information redacted), clarifying that, under the IDEA, private schools are not subject to the same admission policies which apply to public schools and services plans are prepared only for private school children with disabilities who are designated to receive services.

Topic Addressed: Maintenance of Effort

• Letter dated August 1, 2003, to Washington State Audit Manager Brad White, clarifying that an LEA is not permitted to reduce its level of expenditures under Part B of the IDEA below the level of expenditures for the preceding fiscal year if the decrease is attributed to a reduction in the LEA's retirement rates for its staff.

Topic Addressed: Participation of Children with Disabilities in State and District-Wide Assessments

• Letter dated July 14, 2003, to New Hampshire Disabilities Rights Center Executive Director Dr. Richard Cohen, regarding the requirements for the disaggregation and reporting of assessment and performance indicator data to the public and the Secretary under the IDEA and Title I of the Elementary and Secondary Education Act of 1965, as amended.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Charter Schools

• Letter dated August 8, 2003, to New York State Education Department Deputy Commissioner Lawrence C. Gloeckler, regarding the status of charter schools under New York law for the purposes of Part B of the IDEA and requesting clarification on how the State is ensuring that the requirements for charter schools under the IDEA are being met.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations and Reevaluations

• Letter dated September 5, 2003, to Hofstra University Professor Frank G. Bowe, clarifying that an agency may not use the due process procedures under the IDEA to override the requirement that informed parental consent be obtained before the initial provision of special education and related services.

• Letter dated September 3, 2003, to U.S. Senator Ben Nighthorse Campbell, regarding the use of intelligence quotient tests to determine the eligibility of students with disabilities for special education under section 504 of the Rehabilitation Act of 1973 and under the IDEA.

Topic Addressed: Individualized Education Programs

• Letter dated August 28, 2003, to Fort Thomas Kentucky Independent Schools Assistant Superintendent Rita Byrd, clarifying that Federal regulations do not address the public agency's responsibility to make an employee of the agency, including a student's former teacher, available for IEP meetings.

• Letter dated August 28, 2003, to individual (personally identifiable information redacted), clarifying that whether an employee who is not required by 34 CFR 300.344(a) to be part of an IEP team may be required to attend or be charged leave to attend an IEP meeting is a matter of State and/or local policy.

• Letter dated July 25, 2003, to individual (personally identifiable information redacted), regarding which parties are responsible under the IDEA for developing, reviewing, and, if appropriate, revising the IEP and clarifying that the decision as to who is responsible for putting IEP team decisions in writing is made by the public agency.

Section 615—Procedural Safeguards

Topic Addressed: Surrogate Parents

• Letter dated July 10, 2003, to New Hampshire State Director of Special Education Mary J. Ford, regarding the distinction between a surrogate parent under 34 CFR 300.515 and a person acting as a parent under 34 CFR 300.20.

Part C—Infants and Toddlers With Disabilities

Section 635—Requirements for Statewide System

Topic Addressed: Procedural Safeguards

• Letter dated August 19, 2003, to individual (personally identifiable information redacted), regarding (1) the Office for Civil Rights' authority over complaints related to discrimination based on disability, (2) the resolution of individual complaints and the award of compensatory services under Part C of the IDEA, and (3) the lead agency's responsibility for general supervision of all Part C programs and activities, including the monitoring of agencies carrying out Part C services.

Other Letters That Do Not Interpret the IDEA But May Be of Interest to Readers

Topic Addressed: Free Appropriate Public Education

• Letter dated August 28, 2003, to Chief State School Officers, regarding implementation of the Title I choice and supplemental educational services provisions of the No Child Left Behind Act of 2001 (NCLB).

Topic Addressed: Confidentiality of Education Records

• Letter dated July 2, 2003, to Chief State School Officers, regarding (1) release of student information to military recruiters under the National Defense Authorization Act for Fiscal Year 2002 and (2) the process by which parents are notified and have an opportunity to request that this information not be disclosed without their consent, similar to the ''directory information'' provisions under the Family Educational Rights and Privacy Act.

Topic Addressed: Personnel Standards

• Letter dated July 28, 2003, to Chief State School Officers, regarding provisions in NCLB, the Teacher Assistance Corps, and efforts to share ideas about improvements in teacher quality.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–

888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: December 5, 2003.

Troy R. Justesen,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–30633 Filed 12–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory Notice of Availability of a Financial Assistance Announcement

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a funding opportunity announcement.

SUMMARY: Notice is hereby given of the intent to issue Funding Opportunity Announcement No. DE–PS26–04NT42061 entitled ''Clean Coal Power Initiative.'' A draft funding opportunity announcement, as a precursor to potentially awarding multiple financial assistance cooperative agreements, is now being developed. Following release of the draft funding opportunity announcement, expected in November 2003, a comment and response period with industry and other potential partners will be conducted prior to final issuance of the funding opportunity announcement. Final issuance of the funding opportunity announcement is anticipated on or about January 16, 2004, with selections expected early in fiscal year 2005. DOE anticipates availability of $300–$400 million to fund projects selected under this announcement, and industry must match (or exceed) the government cost share for every project. DOE anticipates making multiple awards under this funding opportunity announcement.

DATES: The draft announcement will be available on the ''Industry Interactive Procurement System'' (IIPS) Web page located at *http://e-center.doe.gov* on or about November 26, 2003. Applicants can obtain access to the announcement from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

ADDRESSES: Questions and comments regarding the content of the announcement should be submitted through the ''Submit Question'' feature of IIPS at *http://e-center.doe.gov.* Locate the announcement on IIPS and then click on the ''Submit Question'' button at the top. Enter required information. DOE will try to respond to a question within 3 days, unless a similar question and answer have already been posted on the website. You will receive an electronic notification that your question has been answered.

Responses to questions may be viewed through the ''View Questions'' feature. If no questions have been answered, a statement to that effect will appear. You should periodically check ''View Questions'' for new questions and answers.

Questions regarding how to submit questions or view responses can be e-mailed to the IIPS HELP Desk at *helpdesk@pr.doe.gov* or by calling 1 (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Jo Ann C. Zysk, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, PO Box 10940, E-mail Address: *zysk@netl.doe.gov,* Telephone Number: (412) 386–6600.

SUPPLEMENTARY INFORMATION: The Clean Coal Power Initiative (CCPI) is a cost-shared partnership between the government and industry to demonstrate advanced coal-based electric power generation technologies. The goal is to accelerate readiness for commercial deployment of advanced technologies to ensure that the United States has clean, reliable, and affordable electricity based on coal, which is fundamental to a strong U.S. economy and to domestic energy security. This CCPI announcement is open to any coal-based technology advancement that results in efficiency, environmental, or economic improvements potentially capable of achieving coal technology performance levels specified in the Coal Power Program Roadmap (*http://www.netl.doe.gov/publications/proceedings/03/CCPI/presentation_markel.pdf.*) The announcement is open to technologies capable of producing any combination of heat, fuels, chemicals, or other useful byproducts in conjunction with electricity generation. Prospective projects must ensure that coal is used for at least 75% of the fuel energy input to the process and that electricity is at least 50% of the energy-equivalent output from the technology demonstration. Additionally, prospective projects must show the potential for rapid market penetration upon successful demonstration of the technology or concept.

The advanced technologies to be demonstrated under this program will be vital to the role that coal will play on the world power production scene. Production of low-cost electricity and power using coal while maintaining a clean environment has the potential to raise the standard of living of not only the citizens of the United States, but of the world as a whole.

Once released, the funding opportunity announcement will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or e-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The announcement will only be made available in IIPS, no hard (paper) copies of the announcement and related documents will be made available. Telephone requests, written requests, e-mail requests, or facsimile requests for a copy of the draft funding opportunity announcement package will not be accepted and/or honored. The draft announcement will be open for public comments on November 26, 2003 and will be closed to public comments on December 26, 2003.

The final funding opportunity announcement will be made available on or about January 16, 2004. Applications must be prepared and submitted in accordance with the instructions and forms contained in the announcement. The final announcement document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, Pennsylvania, on November 21, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–30610 Filed 12–9–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Number DE–PS36–04GO94006]

Geothermal Outreach

AGENCY: Golden Field Office, U.S. Department of Energy.

ACTION: Notice of issuance of funding.

SUMMARY: The Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is seeking applications for communication and outreach projects to supplement the GeoPowering the West (GPW) effort.

Through financial assistance awards, DOE intends to provide financial support to States in the Denver and Seattle Regions ONLY, which include Denver (LA, TX, OK, NM, CO, UT, WY, MT, SD, ND, NE) and Seattle (AK, HI, WA, OR, ID, NV, CA, AZ, American Samoa, Guam, and the Northern Mariana Islands) Regions. This program is authorized under provisions of the ''Geothermal Energy Research, Development, and Demonstration Act of 1976,'' Pub. L. 93–410; Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989, Pub. L. 101–218; and the Energy Policy Act of 1992, Pub. L. 102–486, Title XII.

DATES: Issuance of the announcement is planned for December 1, 2003.

ADDRESSES: To obtain a copy of the announcement, interested parties should access the DOE Golden Field Office home page at *http://www.go.doe.gov/business.html*, click on ''Funding Announcements,'' and then click on access, which, will provide a link to the announcement number in the Industry Interactive Procurement System (IIPS) Web site and provide instructions on using IIPS. The announcement can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contracting Activity, for those announcements issued by the Golden Field Office. DOE will not issue paper copies of the announcement.

IIPS provides the medium for disseminating announcements, receiving financial assistance applications, and evaluating the applications in a paperless environment. The application may be submitted by the applicant or a designated representative that receives authorization from the applicant; however, the application documentation must reflect the name and title of the representative authorized to enter the applicant into a legally binding agreement. The applicant or the designated representative must first register in IIPS, entering their first name and last name, then entering the company name/address of the applicant.

For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Questions regarding this announcement should be submitted electronically through IIPS by ''submitting a question'' on the IIPS ''Finanicial Assistance Form'' specific to this announcement. Response to questions will be posted on IIPS and available through ''View Questions.''

Issued in Golden, Colorado, on December 1, 2003.

James P. Damm,

Acting Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–30611 Filed 12–9–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–445–006]

Alliance Pipeline L.P.; Notice of Negotiated Rates

December 3, 2003.

Take notice that on November 26, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2004:

Third Revised Sheet No. 11
Third Revised Sheet No. 12
Third Revised Sheet No. 13
Third Revised Sheet No. 14

Alliance states that copies of its filing have been mailed to all customers, State commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00492 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–025]

Colorado Interstate Gas Company; Notice of Negotiated Rates

December 3, 2003.

Take notice that on November 26, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of December 1, 2003:

First Revised Sheet No. 11G
First Revised Sheet No. 11H
First Revised Sheet No. 11O
First Revised Sheet No. 11P

CIG states that the tendered tariff sheets implement a new negotiated rate transaction and update three previously filed negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00507 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–053]

Gas Transmission Northwest Corporation; Notice of Negotiated Rates

December 3, 2003.

Take notice that on November 26, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Third Revised Sheet No. 15 and Third Revised Sheet No. 23, with an effective date of December 1, 2003.

GTN states that these sheets are being filed to update tariff provisions related to GTN's negotiated rate transactions.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary .

[FR Doc. E3–00491 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–14–002]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Tariff Filing

December 3, 2003.

Take notice that on November 26, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 11, with an effective date of December 1, 2003.

Maritimes states that the purpose of this filing is to lower the Fuel Retainage Percentage to 1.10 percent effective December 1, 2003, for all shippers on the Maritimes system. Maritimes states that it agreed to lower the Fuel Retainage Percentage to resolve the issues raised by a shipper in this proceeding.

Maritimes states that copies of its filing have been mailed to all parties listed on the Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00495 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

National Fuel Gas Supply Corporation

[Docket No. RP04–88–000]

Notice of Proposed Changes in FERC Gas Tariff

December 3, 2003.

Take notice that on November 28, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twenty Second Revised Sheet No. 8, with an effective date of January 1, 2004.

National states that the proposed tariff sheet reflects an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment provision set forth in section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of the filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00501 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–89–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 3, 2003.

Take notice that on November 28, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty Ninth Revised Sheet No. 9, to become effective December 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00502 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–90–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 3, 2003.

Take notice that on November 28, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sixtieth Revised Sheet No. 9 and Seventh Revised Sheet No. 43 to its FERC Gas Tariff, Fourth Revised Volume No. 1, with a proposed effective date of January 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00503 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–94–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2003.

Take notice that on December 1, 2003, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective January 1, 2004:

66 Revised Sheet No. 50
67 Revised Sheet No. 51
65 Revised Sheet No. 53
15 Revised Sheet No. 56

Northern states that this filing establishes the System Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 2004, for the period January 1 through December 31, 2004.

Northern further states that copies of the filing have been mailed to each of its customers and interested State commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00506 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–404–009 and RP03–398–006]

Northern Natural Gas Company; Notice of Compliance Filing

December 3, 2003.

Take notice that on December 1, 2003, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

2 Substitute 64 Revised Sheet No. 53
Sixth Revised Sheet No. 55
Substitute Second Revised Sheet No. 260A
Eighth Revised Sheet No. 286
Eleventh Revised Sheet No. 287
Substitute Original Sheet No. 305A
Substitute Original Sheet No. 305B
Substitute First Revised Sheet No. 306
Substitute Second Revised Sheet No. 444
Substitute First Revised Sheet No. 445

Northern states that it is filing the above-referenced tariff sheets in compliance with the Commission's Order on Order No. 637 proceeding.

Northern further states that copies of the filing have been mailed to each of its customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00511 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–85–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2003.

Take notice that on November 26, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 2004:

Third Revised Volume No. 1

Twenty-Sixth Revised Sheet No. 5
Fourth Revised Sheet No. 5–C
Thirteenth Revised Sheet No. 7
Fifteenth Revised Sheet No. 8
Thirteenth Revised Sheet No. 8.1

Original Volume No. 2

Thirty-Sixth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to change its daily reservation and demand rates to reflect 2004 leap year rates computed on the basis of 366 days.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00496 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–86–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreements

December 3, 2003.

Take notice that on November 26, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing two Rate Schedule TF–1 non-conforming service agreements. Northwest also tendered First Revised Sheet No. 372 as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective December 27, 2003.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00497 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–91–000]

Questar Pipeline Company; Notice of Tariff Filing

December 3, 2003.

Take notice that on November 28, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, Thirtieth Revised Sheet No. 5 to First Revised Volume No. 1, and Thirty-Seventh Revised Sheet No. 8 to Original, Volume No. 3, to be effective January 1, 2004.

Questar states that the tendered tariff sheets revise Questar's Fuel Gas Reimbursement Percentage (FGRP) from the currently effective 1.4% to 2.0%.

Questar states that the FGRP is filed pursuant to Section 12.15 of the General Terms and Conditions of Part 1 of its tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00504 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–611–001]

SCG Pipeline, Inc.; Notice of Compliance Tariff Filing

December 3, 2003.

Take notice that on December 1, 2003, SCG Pipeline, Inc. (SCG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective December 1, 2003:

Substitute Original Sheet No. 55
Original Sheet No. 55A
Substitute Original Sheet No. 67
Substitute Original Sheet No. 68
Original Sheet No. 68A
Substitute Original Sheet No. 69
Original Sheet No. 69A
Substitute Original Sheet No. 70
Original Sheet No. 70A
Substitute Original Sheet No. 71
Substitute Original Sheet No. 73
Substitute Original Sheet No. 85
Original Sheet No. 85A
Substitute Original Sheet No. 91
Substitute Original Sheet No. 103
Original Sheet No. 103A
Substitute Original Sheet No. 104
Original Sheet No. 104A
Substitute Original Sheet No. 124
Substitute Original Sheet No. 126
Substitute Original Sheet No. 161

SCG asserts that the purpose of its filing is to comply with the Commission's Letter Order issued October 30, 2003, at Docket No. RP03–611–000, 105 FERC ¶ 61,160. SCG states that the tariff sheets reflect revisions to SCG's September 22, 2003, FERC Gas Tariff, Original Volume No. 1, with regard to certain penalty provisions and to certain provisions related to NAESB standards.

SCG states that a copy of this filing has been served on the official service list, its customers and interested State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00494 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–87–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing of OFO Penalty Report

December 3, 2003.

Take notice that on November 26, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing, its report of Operational Flow Order (OFO) refunds.

Southern Star states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://*

www.ferc.gov using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protests Date: December 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00500 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–93–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2003.

Take notice that on December 1, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 12, to become effective January 1, 2004.

Southern Star states that this filing is being made pursuant to article 13 of the general terms and conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the 12 months ended September 30, 2003.

Southern Star states that copies of the tariff sheet are being mailed to Southern Star's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00505 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–131]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

December 3, 2003.

Take notice that on November 26, 2003, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Murphy Gas Gathering, Inc. Tennessee requests that the Commission grant such approval effective January 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00508 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–132]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

December 3, 2003.

Take notice that on November 26, 2003, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Callon Petroleum Operating Company. Tennessee requests that the Commission grant such approval effective January 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00509 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–489–001]

Vector Pipeline L.P.; Notice of Motion To Place Tariff Sheets Into Effect

December 3, 2003.

Take notice that on November 26, 2003, Vector Pipeline L.P. (Vector) filed pursuant to Section 154.206 of the Commission's regulations a motion to place into effect certain tariff sheets to its FERC Gas Tariff that were suspended by order issued June 30, 2003. The tariff sheets are proposed to be effective December 1, 2003.

Vector states that the purpose of the instant filing is to place into effect on December 1, 2003, the end of the suspension period in this proceeding, the rates filed on May 30, 2003 as adjusted to reflect the agreement of the parties in a settlement filed with the Commission on November 4, 2003, as well as certain other tariff sheets that were the subject of the June 30, 2003 Order.

Vector states that copies of this filing are being served on all jurisdictional customers, applicable state commissions, and participants in Docket No. RP03–489–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00493 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–28–010]

Wyoming Interstate Company, Ltd; Notice of Negotiated Rates

December 3, 2003.

Take notice that on November 26, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of December 1, 2003.

Second Revised Sheet No. 105
Original Sheet Nos. 115 and 116
Original Sheet Nos. 118

WIC states that these tariff sheets implement three new negotiated rate transactions and update a previously filed negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00510 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–30–000, et al.]

Central Illinois Light Company, et al.; Electric Rate and Corporate Filings

December 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Illinois Light Company d/b/a AmerenCILCO and Ameren Energy Marketing Company

[Docket No. EC04–30–000]

Take notice that on November 25, 2003, Central Illinois Light Company d/b/a AmerenCILCO and Ameren Energy Marketing Company (AEM) (collectively Applicants), submitted an application pursuant to section 203 of the Federal Power Act, and part 33 of the Federal Energy Regulatory Commission regulations, 18 CFR part 33, requesting all Commission authorizations and approvals for the assignment by AmerenCILCO to AEM of certain contracts between AmerenCILCO and various counterparties.

AEM states that copies of this filing have been served on all affected state commissions and also parties to the contracts affected by the transfer.

Comment Date: December 16, 2003.

2. Idaho Power Company

[Docket No. EL99–44–008]

Take notice that on November 24, 2003, Idaho Power Company tendered its compliance filing in the above-captioned docket.

Comment Date: December 24, 2003.

3. Black Hills Ontario, L.L.C.

[Docket Nos. EL04–30–000 and QF84–122–004]

Take notice that on November 26, 2003, Black Hills Ontario, L.L.C. (Black Hills) filed a petition with the Federal Energy Regulatory Commission for recertification of its cogeneration facility as a qualifying facility under § 292.205(a) of the Commission's regulations and limited waiver of the Commission's qualifying cogeneration

facility efficiency standard requirement for 2003.

Black Hills states it is a 7.84 MW (average annual net generation) natural gas-fired topping cycle cogeneration facility located at Ontario, California and includes certain transmission interconnection facilities that interconnect the facility with the transmission system of Southern California Edison Company (SCE). Black Hills further states that it sells the electric output of the facility to SCE.

Comment Date: December 26, 2003.

4. Citadel Energy Products LLC

[Docket No. ER02–2339–001]

Take notice that on November 26, 2003, Citadel Energy Products LLC (Citadel) filed an amendment to its tariff to add Appendix A, Market Behavior Rules. Citadel states that with this amendment it satisfies a condition imposed when the tariff originally was accepted by Commission's Letter Order in Docket No. ER02–2339–000 (Aug. 12, 2002). Citadel further states that the text of the amendment is essentially identical to that promulgated by Order issued November 17, 2003, in Docket No. EL01–118–000, 105 FERC ¶61,218.

Comment Date: December 17, 2003.

5. NRG Marketing Services LLC

[Docket No. ER03–955–002]

Take notice that on November 26, 2003, NRG Marketing Services LLC tendered for filing revised tariff sheets to comply with the Federal Energy Regulatory Commission's Order issued November 10, 2003 in the above-referenced docket.

Comment Date: December 17, 2003.

6. Ameren Services Company

[Docket No. ER04–53–001]

Take notice that on November 26, 2003, AmerenEnergy Resources Generating Company (AERG) submitted for filing a Notice of Succession, pursuant to §§ 35.16 and 131.51 of the Commission's regulations. AERG asserts that the purpose of the filing is to amend the Notice of Succession in Docket No. ER04–53–000 by filing the AmerenEnergy Resources Generating Company FERC Electric Tariff, Original Volume No. 1 (Supersedes FERC Central Illinois Generation, Inc. FERC Electric Tariff, Original Volume No. 1).

Comment Date: December 17, 2003.

7. Ameren Services Company

[Docket No. ER04–99–001]

Take notice that on November 26, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Network Integration Transmission Service and Network Operating Agreement between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the filing is to replace the unexecuted Agreements in Docket No. ER04–99–000 with the revised executed Agreements.

Comment Date: December 17, 2003.

8. Ameren Services Company

[Docket No. ER04–100–001]

Take notice that on November 26, 2003, Ameren Services Company (ASC) tendered for filing revised unexecuted Network Integration Transmission Service and Network Operating Agreements between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the filing is to replace the unexecuted Agreements in Docket No. ER04–100–000 with the revised executed Agreements.

Comment Date: December 17, 2003.

9. Gulfstream Energy, LLC

[Docket No. ER04–164–000]

Take notice that on December 1, 2003, Gulfstream Energy, LLC, requested a withdrawal of its Notice of Cancellation of market-based rate tariff filed on November 14, 2003, in the above captioned proceeding.

Comment Date: December 15, 2003.

10. Entergy Services, Inc.

[Docket No. ER04–207–001]

Take notice that on November 25, 2003, Entergy Services, Inc., (Entergy) on behalf of the Entergy Operating Companies, tendered for filing an errata filing to correct proposed section 11.3.3.2 as contained in Entergy's November 19, 2003 filing in the above-referenced docket.

Comment Date: December 16, 2003.

11. American Electric Power Service Corporation

[Docket No. ER04–223–000]

Take notice that on November 25, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an Amended Interconnection and Operation Agreement between Ohio Power Company and Duke Energy Hanging Rock, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as First Revised Service Agreement No. 315 to the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001. AEP requests an effective date of November 7, 2003.

AEPSC states that a copy of the filing was served upon Duke Energy Hanging Rock, LLC and the Public Utilities Commission of Ohio.

Comment Date: December 16, 2003.

12. PacifiCorp

[Docket No. ER04–224–000]

Take notice that on November 25, 2003, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a revised Attachment J to its Open Access Transmission Tariff calculating load ratio shares applicable to PacifiCorp's Network Integration Transmission Service Customers.

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and PacifiCorp's Network Customers.

Comment Date: December 16, 2003.

13. Progress Energy on Behalf of Florida Power Corporation

[Docket No. ER04–225–000]

Take notice that on November 25, 2003, Florida Power Corporation (Florida Power) tendered for filing an executed Firm Point-To-Point Transmission Service Agreement with The City of Gainesville Florida d/b/a Gainesville Regional Utilities.

Florida Power states that this Service Agreement is being filed under the terms and conditions of the Open Access Transmission Tariff filed on behalf of Florida Power Corporation.

Florida Power Corporation is requesting an effective date of November 1, 2003 for this Service Agreement. Florida Power Corporation states that a copy of the filing was served upon the North Carolina Utilities Commission and the Florida Public Service Commission.

Comment Date: December 16, 2003.

14. APN Starfirst, LP

[Docket No. ER04–226–000]

Take notice that on November 25, 2003, APN Starfirst, LP (Starfirst) petitioned the Commission for acceptance of Starfirst Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Starfirst states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer and is not in the business of generating or transmitting electric power. Starfirst further states that it is a limited partnership engaged primarily in the business of providing energy management services to commercial, industrial, and government entities.

Comment Date: December 16, 2003.

15. Ameren Services Company

[Docket No. ER04–228–000]

Take notice that on November 26, 2003, Ameren Services Company (ASC) tendered for filing Service Agreements for Network Integration Transmission Service and a Network Operating Agreements between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Customer pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: December 17, 2003.

16. Ameren Services Company

[Docket No. ER04–229–000]

Take notice that on November 26, 2003, Ameren Services Company (ASC) tendered for filing executed Service Agreements for Firm Point-to-Point Service and Non-Firm Point-to-Point Transmission Service between ASC and Exelon Energy Company. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to Exelon Energy Company pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: December 17, 2003.

17. New York Independent System Operator, Inc.

[Docket No. ER04–230–000]

Take notice that on November 26, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing revisions to the ISO Market Administration and Control Area Services Tariff proposing a number of tariff revisions associated with the implementation of new Real-Time Scheduling software and related market improvements.

The NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania. NYISO further states that in addition, the complete filing has been posted on the NYISO's Web site at *http://www.nyiso.com* and the NYISO will make a paper copy available to any interested party that requests one.

Comment Date: December 17, 2003.

18. Conectiv Bethlehem, LLC

[Docket No. ER04–231–000]

Take notice that on November 26, 2003, Conectiv Bethlehem, LLC (CBLLC), filed its Rate Schedule FERC No. 1, and cost support for its Reactive Supply and Voltage Control from Generation Sources Service to be provided by its 885 MW generating station located in Bethlehem, Pennsylvania, pursuant to section 205 of the Federal Power Act and Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff. CBLLC seeks an effective date of January 1, 2004.

CBLLC states that copies of the filing were served upon PJM, PPL Electric Utilities Corporation and the Pennsylvania Public Utility Commission.

Comment Date: December 17, 2003.

19. Constellation Power Source, Inc.

[Docket No. ER04–232–000]

Take notice that on November 26, 2003, Constellation Power Source, Inc. (CPS) tendered for filing, under section 205 of the Federal Power Act, a petition requesting that the Commission: (1) Grant CPS authorization to make wholesale sales of electricity to its affiliated utility, Baltimore Gas and Electric Company (BGE) if it is selected as a winning bidder in the competitive solicitation process approved by the Maryland Public Service Commission (MPSC) to secure wholesale supply for BGE's retail Standard Offer Service obligations; and (2) extend the current waiver of the Commission's code of conduct, and other provisions of CPS' market-based rate tariff, to the extent necessary to effectuate such sales to BGE.

Comment Date: December 17, 2003.

20. Southern California Edison Company

[Docket No. ER04–233–000]

Take notice that on November 26, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between the City of Moreno Valley (Moreno Valley) and SCE. SCE states that the purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will commence the engineering, design, procurement, and construction of the interconnection facilities and distribution system upgrades required to interconnect Moreno Valley's Cactus Load Project to SCE's Distribution System.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Moreno Valley.

Comment Date: December 17, 2003.

21. Duke Energy Marketing America, LLC

[Docket No. ER04–234–000]

Take notice that on November 26, 2003, Duke Energy Marketing America, LLC (DEMA) petitioned the Federal Energy Regulatory Commission to amend the Western Systems Power Pool (WSPP) Agreement to include DEMA as a participant. DEMA respectfully requests that the Commission allow the amendment to the WSPP Agreement to become effective on November 27, 2003.

DEMA states that a copy of this filing has been served upon the WSPP Executive Committee Chair, WSPP Operating Committee Chair, WSPP General Counsel, and WSPP Secretary/Treasurer.

Comment Date: December 17, 2003.

22. Florida Power Corporation

[Docket No. ER04–235–000]

Take notice that on November 26, 2003, Florida Power Corporation (FPC) tendered for filing an executed Southwest Landfill Generating Facility Parallel Operation Agreement between FPC and Gainesville Regional Utilities. FPC is requesting an effective date of November 1, 2003 for this Rate Schedule.

FPC states that a copy of the filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: December 17, 2003.

23. Vermont Electric Power Company, Inc.

[Docket No. ER04–236–000]

Take notice that on November 26, 2003, Vermont Electric Power Company, Inc. submitted for filing an Operation and Maintenance Agreement and a Bill-Back Agreement between VELCO and Citizens Communication Company.

Comment Date: December 17, 2003.

24. Virginia Electric and Power Company

[Docket No. ER04–237–000]

Take notice that on November 26, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing the following:

A Master Power Purchase & Sale Agreement between Virginia Electric and Power Company and North Carolina Electric Membership Corporation, designated as Service Agreement Number 7, under the Company's Wholesale Cost-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 7, effective on January 16, 2002. Dominion Virginia Power requests an effective date of January 1, 2004 for the Master Power Purchase and Sale Agreement,

Amendment 1 of the Master Power Purchase and Sale Agreement, Capacity and System Firm Energy Transaction Confirmation and VA System Confirm-Bridge Transaction Confirmation.

Dominion Virginia Power states that copies of the filing were served upon North Carolina Electric Membership Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: December 17, 2003.

25. New England Power Pool

[Docket No. ER04–238–000]

Take notice that on November 26, 2003, the New England Power Pool (NEPOOL) Participants Committee filed revisions to NEPOOL Market Rule 1 to provide greater flexibility for Load Response Resources and to clarify the method for calculating Real-Time Operating Reserve Credits. A January 1, 2004 effective date is requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: December 17, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00512 Filed 12–9–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7597–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address petitions for review filed by Horween Leather Company and Gutmann Leather Company (collectively, ''Petitioners'') in the United States Court of Appeals for the District of Columbia: *Horween Leather Company* v. *United States Environmental Protection Agency,* No. 02–1138 (D.C. Cir.), and consolidated case *Gutmann Leather Company* v. *United States Environmental Protection Agency,* No. 02–1139 (D.C. Cir.). Petitioners filed petitions for review challenging EPA's ''Final Rule for National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations,'' published at 67 FR 9156 *et seq.* (February 27, 2002). These standards are based on the performance of Maximum Achievable Control Technology (MACT), and implement section 112(d) of the Clean Air Act. Under the terms of the proposed settlement agreement, Petitioners and EPA will promptly file a pleading for the dismissal of the petitions for review with prejudice if EPA promulgates in final form an amendment to 40 CFR 63.5345, 63.5350, and 63.5460 clarifying the definition of ''specialty leather''.

DATES: Written comments on the proposed settlement agreement must be received by January 9, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2003–0007, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (202) 564–5523.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

This case concerns a challenge to the rule entitled ''National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations,'' published at 67 FR 9156 *et seq.* (February 27, 2002). These standards are based on the performance of Maximum Achievable Control Technology (MACT), and implement section 112(d) of the Clean Air Act.

A number of tanneries subject to the rule filed petitions for review. EPA has negotiated a proposed settlement agreement with these petitioners addressing their request for clarification of the definition of ''specialty leather'', as that term is defined in the rule. The proposed settlement would require EPA to propose a rule amending 40 CFR 63.5345, 63.5350, and 63.5460 clarifying that definition. The proposed rule would also add record-keeping requirements should EPA establish a new subcategory addressing a new type of specialty leather.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get a Copy of the Settlement Agreement?

EPA has established an official public docket for this action under Docket ID No. OGC–2003–0007 which contains a copy of the settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 4, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 03–30592 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–80–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7597–8]

Stakeholder Comment on Preliminary National Enforcement and Compliance Assurance Priorities for Fiscal Years 2005, 2006 and 2007

AGENCY: Environmental Protection Agency.

ACTION: Solicitation of recommendations and comments.

SUMMARY: This Notice is a Federal Agency request for the public to comment and provide recommendations on triennial national enforcement and compliance assurance priorities to be addressed for fiscal years 2005, 2006 and 2007. The information submitted by commentors will be considered as part of the process EPA uses to identify and select national enforcement and compliance priorities. Final priority selections will be incorporated into the EPA's Office of Enforcement and Compliance Assurance Workplanning Guidance (which provides national program direction for all EPA Regional offices). These priorities will also affect implementation of the enforcement and compliance goals and objectives outlined in the EPA Strategic Plan, as mandated under the Government Performance and Results Act (GPRA).

DATES: The agency must receive comments and recommendations on or before January 12, 2004.

ADDRESSES: Submit all electronic comments and recommendations to *docket.oeca@epa.gov*. Please reference Docket Number OECA–2003–0154 in the submission. (Comments may be submitted on disk in WordPerfect 8.0 or earlier versions) Written comments can be mailed to: Enforcement & Compliance Docket and Information Center (2201T). Docket Number OECA–2003–0154. Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Penn. Ave., NW., Washington, DC 20460. Please be aware that mail addressed to EPA headquarters may experience delays in delivery resulting from security screening. Comments may be delivered in person to: U.S. Environmental Protection Agency, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Tolpa, Chief, Planning and Analysis Branch; Voice: (202) 564–2337, Fax: (202) 564–0034.

SUPPLEMENTARY INFORMATION:

Contents

A. Background

On October 1, 2003, a new EPA Strategic Plan describing how the Agency will utilize its resources to meet its mission became effective. The new Strategic Plan covers fiscal years 2003–2008 and consists of five goals with OECA's activities contained in Goal 5—''Compliance and Environmental Stewardship.'' Outcome performance

measures in Goal 5 capture OECA's work efforts in terms of environmental results achieved. By focusing on environmental results, rather than the activities of Agency programs and organizational units, the goal structure allows for greater flexibility between EPA and its states and federally-recognized Indian tribes (tribes) for solving environmental problems. EPA consulted extensively with the states in the development of the Strategic Plan.

OECA has now aligned its Fiscal Year 2005 through 2007 (FY 2005–2007) work planning cycle with the Agency's strategic planning cycle. OECA's planning cycle sets out short term, annual and multi-year goals for the Office, establishes work planning requirements for the enforcement and compliance assurance programs within the Agency's ten Regional Offices, establishes a small set of national program priorities and requires the development of performance-based strategies to direct the work in the identified priority areas. By aligning its planning cycle with the Agency's Strategic Plan, OECA will be better able to correlate the environmental results achieved in the national enforcement and compliance priorities to the environmental outcomes projected in Goal 5 of the Strategic Plan. The intent of this **Federal Register** Notice (FR Notice) is to solicit from the public suggestions of new national enforcement and compliance assurance priorities for 2005–2007, and comments on the candidate priorities described below.

This past summer, OECA asked each EPA Regional Office to: (1) Conduct internal discussions about existing and potential national program priorities; and (2) engage its state and tribal regulatory partners in discussions of existing and potential national program priorities for fiscal years 2005–2007. EPA conducted outreach regarding the priorities at an environmental justice forum, which is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA). OECA received comments back from all EPA Regional Offices and six states.

OECA will select the FY 2005–2007 national program priorities using the following criteria:

(a) Significant Environmental Benefit: In what specific areas can the Federal enforcement and compliance assurance programs make a significant positive impact on human health or the environment? What are the known or estimated public health or environmental risks?

(b) *Noncompliance:* Are there particular economic or industrial sectors, geographic areas or facility operations where regulated entities have demonstrated serious patterns of noncompliance?

(c) *EPA Responsibility:* What identified national problem areas or programs are better addressed through EPA's Federal capability in enforcement or compliance assistance?

Based on the analysis of all proposals received and ongoing work, OECA has developed the following preliminary list of suggested FY 2005–2007 national priorities. While not all suggestions submitted appear on the preliminary list of candidates, the opportunity remains for those candidates to be adopted as regional, state, tribal, or local priorities. In considering the following list, please note that OECA remains committed to identifying a very limited number of national priorities to retain flexibility to address emerging problems or issues as they arise. In addition, some current priority areas may be carried forward or refined during the FY 2005–2007 work planning cycle to complete unfinished work. Two current priorities will not be continued through FY 2005–2007. The Petroleum Refining priority is anticipated to be completed by the end of calendar year 2005, and the Resource Conservation and Recovery Act (RCRA) Permit Evaders priority will no longer include a focus on waste-derived fertilizer facilities and foundries. Work such as monitoring or tracking the implementation of Consent Decrees will continue for both as part of the Agency's core program activities.

The following list of candidate priorities is divided into the current priorities and suggested new areas. The tables below include a brief description of the environmental problem in each priority area. Greater detail and background information on each priority area can be found at the DOCKET site identified in the address section of this **Federal Register**.

I. Current Priorities

Priority	Nature of concern
Safe Drinking Water Act—Microbials Plus	Ensure public water systems provide clean and safe drinking water that pose minimal health risks and are largely free from microbiological, chemical or radiological contamination. Efforts would focus upon microbial rules, nitrate requirements and emergency orders to protect public health from contaminants presenting an imminent and substantial endangerment. The suggested priority would also address situations where multiple violations, at one system or different systems in the same geographic area, present an unacceptable cumulative risk to public health.
Clean Water Act/Wet Weather	Ensure compliance with CWA requirements addressing storm water runoff, overflows from combined and sanitary sewers, and concentrated animal feeding operation (CAFO) discharges. These discharges can contain bacteria, pathogens and other pollutants that may cause illnesses in humans, lead to water quality impairment, including beach and shellfish bed closures and harm our nation's water resources.
Clean Air Act (CAA)/New Source Review/Prevention of Significant Deterioration (NSR/PSD).	Ensuring that NSR and PSD requirements of the CAA are implemented. Failure to comply with NSR/PSD requirements may lead to the inadequate control of emissions resulting in the release of thousands of tons of pollution to the air each year, particularly of nitrogen oxides, volatile organic compounds, and particulate matter.
Clean Air Act (CAA)/Air Toxics	Reduce public exposure to toxic air emissions by ensuring compliance through directed monitoring and enforcement with the Maximum Achievable Control Technology (MACT) standards. This is the second phase of this priority following four years of compliance assistance and the development of implementation tools.

II. SUGGESTED NEW AREAS

Title	Nature of concern
Resource Conservation and Recovery Act (RCRA)/Underground Storage Tanks (UST).	Reduce the potential hazard from UST's that can leak petroleum or other hazardous substances into the soil and contaminate groundwater, the source of drinking water for nearly half of all Americans.
Asbestos Hazard Emergency Response Act (AHERA)/Asbestos in Schools.	Minimize or eliminate exposure to airborne friable asbestos in schools. Asbestos is a known carcinogen, and poses a significant potential health risk if students are in an environment where they inhale asbestos fibers.
Financial Responsibility	Strengthen compliance with financial responsibility requirements found under various environmental laws to ensure that individuals or companies handling hazardous waste, hazardous substances, toxic materials or pollutants have adequate funds to close their facilities, cleanup any releases, and compensate any parties affected by their actions.
Ports of Entry	Reduce illegal handling or disposal of hazardous waste stemming from lack of knowledge of hazardous waste management regulations by managers at port of entry warehousing facilities. A potential Homeland Security issue, it is also a potential Environmental Justice (EJ) focus area because many ports of entry facilities are located in low income or non-English speaking neighborhoods.
Tribal	In Indian country and tribal areas in Alaska, address significant human health and environmental problems associated with drinking water and waste management. Ensure compliance within targeted areas and address adjacent noncomplying facilities impacting Indian country and tribal areas.
Auto Salvaging Sector	A significant environmental problem due to significant potential of pollutants such as waste oils, gas, mercury, polychlorinated biphenyls (PCBs), and lead reaching the environment from auto salvaging facilities. This sector includes salvage yards, shredders and their residue and dismantlers. Auto yards are located throughout the United States, and many are small businesses.
RCRA—Mineral Processing	Evidence gathered in recent inspections indicates that mineral processing facilities are failing to obtain the necessary permits and adequately manage their wastes. EPA has found that the mishandling of mineral processing wastes has caused significant environmental damage and resulted in costly cleanups. These highly acidic wastes have caused fish kills and the arsenic and cadmium that these wastes often contain have been found in elevated levels in residential drinking water wells.
Federal Facilities	Improve and better maintain compliance at Federal Facilities through more effective implementation of environmental management systems (EMS). An EMS is an organization's overall plan for handling resources, procedures, processes, and policies to advance environmental protection and performance.
Miscellaneous Plastics	Reduce public exposure to hazardous wastes and pollutants released to the land, air, and water by the miscellaneous plastic products manufacturing sector.
Environmental Justice	Ensure that no racial, ethnic or socioeconomic group bears a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial activities; or from the execution of federal, state, local and tribal programs and policies. Target one or more areas within each Region for focused attention.
Fuels Management	Potentially large quantities of hazardous pollutants are being emitted to air, surface and ground water, and soil from the storage, distribution and ancillary operations at liquid petroleum and natural gas handling facilities. Ensure compliance across a broad spectrum of environmental statutes to minimize releases.
Significant Noncompliance (SNC) Oversight	Ensure proper management of the enforcement and compliance programs under the CAA, the CWA—National Pollutant Discharge Elimination System, and RCRA by ensuring that instances and patterns of significant noncompliance are identified and addressed by EPA and/or States in a timely manner.

At this time OECA is inviting comments on this preliminary list, and any suggestions for other FY 2005–2007 priorities. When submitting responses to this FR Notice, please rank which of the areas listed above should be a top concern for national focus, as well as suggesting others not included on the current list. If additional problem areas are identified, please provide supporting information on the suggestions and be sure to relate them to the selection criteria. Again, suggested priority areas that are not chosen may be candidates for individual regional, state, or tribal attention and/or continued investigation.

B. Projected Time Frame

After receiving stakeholder responses to this FR Notice OECA will complete its analysis of candidate priorities and present a list recommendations for final approval to the Assistant Administrator for Enforcement and Compliance Assurance in late January, 2004. In February 2004, EPA will issue the draft FY 2005–2007 OECA Work Planning Guidance to Regional Offices, states and tribes for final review. This draft guidance will include the selected EPA enforcement and compliance assurance national priorities.

C. Review Information

Persons interested in obtaining further background information regarding current or proposed FY 2005–2007 national enforcement and compliance assurance priorities may submit a request for hard copy or electronic version of information to: *docket.oeca@epa.gov*, or contact the docket clerk at (202) 566–1514. Please reference Docket Number OECA–2003–0154 in the request. A reasonable fee may be charged by EPA for copying docket materials.

Dated: December 4, 2003.

John Peter Suarez,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–30593 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0380; FRL–7336–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0380, must be received on or before January 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number (703) 308–9354; e-mail address: *waller.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide Manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0380. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-

mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0380. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0380. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0380.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0380. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in Any Previously Registered Products

1. *File symbol*: 75753–R. *Applicant*: Agriguard Company, LLC, P.O. Box 630, Cranford, NJ 07016. *Product name*: Furfural Technical. *Product type*: Soil fumigant. *Active ingredient*: Furfural at 99.7%. *Proposed classification/Use*: None. For formulating use only into soil fumigant products for use in greenhouses on cut flowers, greens, transplants, propagative materials and other non-food/non-feed items.

2. *File symbol*: 75753–E. *Applicant*: Agriguard Company, LLC. *Product name*: Multiguard Protect. *Product type:* Soil fumigant. *Active ingredient*: Furfural at 90%. *Proposed classification/Use*:None. Used in greenhouses on cut flowers, greens, transplants, propagative materials and other non-food/non-feed items.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 26, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–30521 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0305; FRL–7327–7]

Diazinon; Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel the registrations for all of their outdoor non-agricultural end-use products containing diazinon [O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate]. EPA intends to grant these requests by issuing a cancellation order at the close of the comment period for this announcement, unless the Agency receives substantive comments within the comment period that would merit its further review of these requests. It is EPA's intent that the cancellation of the outdoor non-agricultural end-use products will be effective on December 31, 2004. The Agency requests public comment on these voluntary cancellation requests, and is providing a 180–day comment period.

DATES: Comments on the requested registration cancellations must be submitted to the address provided below and identified by docket identification (ID) number OPP–2003–0305. Comments must be received on or before June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; e-mail address: *plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0305. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. EPA also established two dockets containing documents in support of the diazinon IRED. They are dockets OPP–34225 and OPP–2002–0251. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 75 pesticide products registered under section 3 of FIFRA. These registrations are listed in ascending sequence by registration number in Table 1 of this unit.

A. Background Information

Diazinon is an organophosphorous insecticide and is one of the most widely used insecticides in the U.S. It is used for outdoor non-agricultural, as well as agricultural, pest control.

Under a December 5, 2000, memorandum of agreement (MOA), the technical registrants of diazinon agreed to certain provisions regarding outdoor non-agricultural end-use products. All companies holding registrations for diazinon outdoor non-agricultural end-use products submitted letters to the Agency agreeing to the following changes in the conditions of their registrations according to the MOA:

1. Stop manufacturing all diazinon outdoor non-agricultural end-use products no later than June 30, 2003.

2. Stop shipment of all diazinon outdoor non-agricultural end-use products no later than August 31, 2003.

3. Voluntarily cancel all diazinon outdoor non-agricultural end-use product registrations by December 31, 2004.

4.Adhere to certain existing stocks provisions, which are explained in Unit IV.

The Reregistration Eligibility Decision (RED) document summarizes the findings of EPA's reregistration process for individual chemical cases, and reflects the Agency's decision on risk assessment and risk management for uses of the individual pesticides. EPA has issued an Interim Reregistration Eligibility Decision (IRED) document assessing the risks from exposure to diazinon.

B. Requests for Voluntary Cancellation

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless: (1) The registrants request a waiver of the comment period, or (2) the Administrator determines that the continued use of the pesticide would pose an unreasonable adverse effect on the environment.EPA will apply a 180–day comment period to this notice.

TABLE 1.— DIAZINON REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration number	Product name
16–118	Dragon Granular Lawn Insect Control
16–119	Dragon 5% Diazinon Granules
16–157	Dragon 25% Diazinon Spray
16–166	Dragon Diazinon Water-Based Concentrate
192–161	Dexol Diazinon 5% Granules
228–162	Riverdale Lawn Insect Killer Plus Fertilizer

TABLE 1.— DIAZINON REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration number	Product name
228–177	Riverdale 5% Diazinon Insect Killer Granules
239–2364	Ortho Diazinon Insect Spray
239–2375	Ortho Diazinon Granules
239–2479	Ortho Diazinon Soil and Turf Insect Control
239–2503	Ortho Diazinon Granular Fire Ant Killer
239–2619	Hi-Power Ant, Roach, and Spider Spray Formula II
239–2630	Ortho Diazinon Insect Spray Ready-to-Use
239–2643	Ortho Diazinon Insect Spray 2
239–2671	Ortho Diazinon Dust
538-92	Lawn Insect Control Plus Fertilizer
538-187	Scotts Lawn Insect Control
538–204	Western Lawn Insect Control Plus Fertilizer
538–254	Fertilizer Plus Diazinon
538–258	Fertilizer and Diazinon
572–292	5% Diazinon Granular Lawn Insecticide
572–305	Rockland Diazinon Spray
655–556	Prentox Diazinon 5G
829–249	Diazinon Insecticide 25% Spray Concentrate
829–264	SA–50 Brand 5% Diazinon Granules
869–139	Green Light Diazinon 5 Granules
869–231	Green Light Diazinon
961–358	Lebanon Lawn and Garden Insecticide with Diazinon 5G
961–393(old reg. no. 8660–11)	Sta-Green Lawn Insect Control and Fertilizer
1386–648	5% Diazinon Insect Killer Granules
3546–27	Shoofly Hornet Jet-bomb

TABLE 1.— DIAZINON REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration number	Product name
7401–216	Ferti-lome Diazinon Insect Spray
7401–222	Ferti-lome Special Diazinon Insect Killer Granules
7401–441	Ferti-lome Diazinon Water Base Concentrate
8378–12	Lawn Insect Control Plus Fertilizer
8378–32	Shaw's 5% Diazinon Insect Granules
8780–51	Turf Line Diazinon 5G Lawn Insect Control
8780–56	Turf Line Arthroban Triple Action #4
8845–92	Spectracide Lawn and Garden Insect Control
8845–95	Spectracide 6000 Lawn and Garden Insect Control
8845–101	Spectracide Fire Ant Killer
9198–45	The Andersons Turf Food with 3.33% Diazinon
9198–62	The Andersons Lawn and Garden Insecticide 5% Diazinon
9688–89	Chemsico Diazinon 2G
10404–14	Lesco Diazinon 3.33% + Fertilizer
10404–23	Lesco Diazinon 5G
19713–263	Drexel Diazinon 5G
19713–264	Drexel Diazinon 2G
19713–317	Bug Spray
28293–199	Unicorn Diazinon 5G Granules
28293–230	Unicorn 25 EC Diazinon
32802–5	All Season Diazinon 5G Insecticide
33955–556	Acme Diazinon 25% Emulsifiable Concentrate
33955–557	Acme Diazinon 5G Lawn and Garden Insect Control

TABLE 1.— DIAZINON REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration number	Product name
34704–57	Clean Crop Diazinon 5 Lawn and Garden
34911–13	Hi-Yield 5% Diazinon Insect Killer Granules
34911–23	Hi-Yield Imported Fire Ant Control Granules
40849–30	Enforcer Ant Kill Granules II
42057–90	Diazinon Liquid (Diazinon 25% Emulsifiable)
42057–107	Morgro 5% Diazinon Granular Lawn and Garden Insect Control
51036–69	Diazinon 2G Lawn and Perimeter Granules
51036–97	Diazinon 5G Homeowner
53883–45	Martins Diazinon 25 E Lawn and Garden Insect Control
53883–46	Martin's Diazinon Granular Lawn Insect Control
53883–51	Martins 5% Diazinon Granules
53883–54	Martin's Fire Ant Killer
53883–80 (old reg. no. 37915–6)	Professional Pest Control Formula DC–500
56819–13 (old reg. no. 8780–54)	Turf Diazinon Lawn Insect Control Plus Fertilizer #2
56819–14 (old reg. no. 8780–55)	Turf Diazinon Lawn Insect Control Plus Fertilizer
59144–2	5% Diazinon Granules
59144–28	Diazinon Lawn and Garden Insecticide
61282–25	Diazinon Lawn and Garden WBC
62366–2	Bug Stuff
67572–1	CP Diazinon Lawn and Garden WB Ready-to-Use
75082–2 (old reg. no. 34822–6)	Di-All Paint Insecticide

Table 2 of this unit includes the names and addresses of record for all

registrants of the products in Table 1 of this unit, in ascending sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company number	Company name and address
16	Dragon Chemical Corporation, 7033 Walrond Drive, NW, P.O. Box 7311, Roanoke, VA 24019
192	Value Gardens Supply, LLC, P.O. Box 585, St. Joseph, MO 64502
228	Nufarm Americas Inc., 1333 Burr Ridge Parkway, Suite 125A, Burr Ridge, IL 60527
239	The Ortho Business Group, P.O. Box 190, Marysville, OH 43040
538	The Scotts Company, 14111 Scottslawn Road, Marysville, OH 43041
572	Rockland Corporation, 686 Passaic Avenue, P.O. Box 809, West Caldwell, NJ 07007
655	Prentiss Inc., CB 2000, Floral Park, New York, NY 11001
829	Southern Agricultural Insecticides, Inc., P.O. Box 218, Palmetto, FL 34220
869	Green Light Company, P.O. Box 17985, San Antonio, TX 78217
961	Lebanon Seaboard Corporation, 1600 East Cumberland Street, Lebanon, PA 17042
1386	Universal Cooperatives Inc., 1300 Corporate Center Curve, Eagan, MN 55121
3546	Lynwood Labs Inc., 945 Great Plain Avenue, Needham, MA 02192
7401	Voluntary Purchasing Group Inc., 1806 Auburn Drive, Carrollton, TX 75007
8378	Knox Fertilizer Company Inc., West Culver Road, P.O. Box 248, Knox, IN 46534
8780	Progressive Lawn Research, Inc., 1225 Lehigh Station Road, P.O. Box 400, Henrietta, NY 14467
8845	Spectrum Group, P.O. Box 142642, St. Louis, MO 63114
9198	The Andersons Lawn Fertilizer Division, Inc., P.O. Box 119, Maumee, OH 43537
9688	Chemsico, P.O. Box 142642, St. Louis, MO 63114
10404	Lesco Inc., 15885 Sprague Road, Strongsville, OH 44136
19713	Drexel Chemical Company, 1700 Channel Avenue, P.O. Box 13327, Memphis, TN 38113
28293	Unicorn Laboratories, 12385 Automobile Boulevard, Clearwater, FL 33762
32802	Howard Johnson's Enterprises Inc., 700 West Virginia Street, Suite 222, Milwaukee, WI 53204
33955	PBI/Gordon Corporation, P.O. Box 014090, Kansas City, MO 64101
34704	Platte Chemical Company, Inc., P.O. Box 667, Greeley, CO 80632
34911	Hi-Yield Chemical Company, 1806 Auburn Drive, Carrollton, TX 75007
40849	Enforcer Products, 1310 Seaboard Industrial Boulevard, NW Atlanta, GA30318
42057	Morgro Chemical Company, 145 West Central Avenue, Salt Lake City, UT 84107
51036	Micro-Flo Company LLC, P.O. Box 772099, Memphis, TN 38117
53883	Control Solutions, Inc., 5903 Genoa-Red Bluff, Pasadena, TX 77507
56819	Progressive Lawn Research Inc. C/O High Point Mills Road, P.O. Box 400, Henrietta, NY 14467
59144	Gro Tec Inc., 30856 Rocky Road, Greeley, CO 80631
61282	Hacco, Inc., P.O. Box 7190, Madison, WI 53707
62366	The Valspar Corporation, 30856 Rocky Road, Greeley, CO 80631
67572	Contract Packaging Inc., 10115 Highway 142, North Covington, GA 30014
75082	Supreme Chemicals of Georgia, Inc., 1535 Oak Industrial Lane, Suite B, Cummings, GA 30041

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. After complying with the requirements in 6(f)(1), the Administrator may approve such a request.

IV. Provisions for Disposition of Existing Stocks

The Agency intends to issue a cancellation order following consideration of all comments received during the comment period, unless the comments warrant further review of this request. Any cancellation order issued in response to this request will have an effective date of December 31, 2004.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. As noted above, the companies listed in Table 2 in Unit II., have agreed to stop shipment of all diazinon outdoor non-agricultural end-use products no later than August 31, 2003. In accordance with the MOA, all companies holding

registrations for outdoor non-agricultural end-use diazinon products agreed to the following existing stocks provisions:

1. Sale and distribution of these outdoor non-agricultural end-use products containing diazinon will not be permitted after December 31, 2004. Except for purposes of product recovery pursuant to the 2000 MOA, shipping such stocks for export consistent with the requirements of FIFRA section 17, or proper disposal in accordance with applicable law.

2. Use of existing stocks may continue until stocks are exhausted. Any such use must be in accordance with the label.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 18, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–30271 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0200; FRL–7332–5]

Propanil and Fenamiphos; Use Deletion and Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, the Agency is issuing a Cancellation Order announcing its approval for the voluntary product and use amendments/cancellations submitted by: Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC, to voluntarily cancel all small grain uses (spring (hard red) wheat, oats, spring barley, and durum wheat) of certain end-use and technical products for the active ingredient propanil (3',4'-dichloropropionanilide), effective July 28, 2003; and Bayer CropScience to voluntary cancel all registrations for products containing the active ingredient fenamiphos (ethyl 3-methyl-4-(methylthio)phenyl-(1-methylethyl)phosphoramidate), effective May 31, 2007. In conjunction with the request for voluntary cancellation, Bayer CropScience has also agreed to amend their existing fenamiphos product registrations and implement interim risk mitigation measures.

FOR FURTHER INFORMATION CONTACT: *For propanil*: Carmen Rodia, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–8041; e-mail address: *rodia.carmen@epa.gov*.

For fenamiphos: Tawanda Spears, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 308–8050; fax number: (703) 308–8005; e-mail address: *spears.tawanda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may however, be of interest to persons who are or may be required to conduct testing of chemical substances under FIFRA or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticide users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all of the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity or if there are any technical questions related to propanil or fenamiphos, please consult the appropriate chemical review manager as listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0200. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202–4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://cascade.epa.gov/RightSite/dk_public_ home.htm* to submit or view public comments, access the index listing of the contents of the official public docket and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

This Order follows up a June 27, 2003, notice of receipt of written requests by Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC to voluntarily amend or cancel their product registrations to terminate the use of propanil on small grains (68 FR 38328) (FRL–7310–6). For fenamiphos, this Order follows up a September 27, 2002 (67 FR 61098) (FRL–7274–2), notice of receipt of a request from Bayer CropScience to voluntarily cancel all their registrations for products containing fenamiphos.

As part of these notices, the Agency indicated that it would issue an Order granting the voluntary product and use registration amendments or cancellations unless the Agency received substantive comment within the respective 30–day public comment periods that would merit its further review of these requests. EPA did not receive any comments specific to these cancellations. Accordingly, the Agency hereby issues in this notice a Cancellation Order granting the requested amendments or cancellations for propanil and fenamiphos registrations. Any distribution, sale or use of the products subject to this Cancellation Order is only permitted in accordance with the terms of the existing stocks provisions of this Cancellation Order.

As part of this Cancellation Order, EPA is approving the requested cancellations or amendments of 15 end-use and technical product registrations registered under section 3 of FIFRA as requested by Agriliance, LLC; Bayer CropScience; Dow AgroSciences, LLC; and RiceCo, LLC for the propanil and fenamiphos products identified in Tables 1 and 2 below. For propanil, the cancellations/amendments were effective on July 28, 2003. For fenamiphos, the cancellations are effective May 31, 2007.

Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(C) for propanil. In addition, Bayer CropScience requested that the Administrator waive the 180–day comment period for fenamiphos. In light of the registrant's requests, EPA provided a 30–day public comment period on the voluntary cancellation and use deletion requests.

The Agency did not receive any comments specific to these cancellations. Accordingly, EPA is issuing an Order in this notice canceling the eight registrations identified in Table 1 and amending the seven registrations listed in Table 2.

TABLE 1.—END-USE AND TECHNICAL PRODUCT REGISTRATION CANCELLATIONS FOR FENAMIPHOS AND PROPANIL

Company Name and Address	EPA Registration Number	Product Name	Chemical Name
Bayer CropScience 2 T.W. Alexander Drive Research Triangle Park, NC 27709	3125–236 (old) 264–726 (new)	NEMACUR 15% Granular	Fenamiphos
	3125–237 (old) 432–1291 (new)	NEMACUR 10% Turf and Ornamental Nematicide	Fenamiphos
	3125–269 (old) 264–727 (new)	NEMACUR Technical Nematicide-Insecticide	Fenamiphos
	3125–283 (old) 264–731(new)	NEMACUR 3	Fenamiphos
	3125–333 (old) 264–739 (old)	NEMACUR Concentrate Nematicide-Insecticide	Fenamiphos
Dow AgroSciences, LLC 9330 Zionsville Road Indianapolis, IN 46268–1054	62719–386	STAMPEDE 3E (Alternate Brand)	Propanil
	62719–404	STAMPEDE CM	Propanil
	62719–413	STAMPEDE 80 EDF (Alternate Brand)	Propanil

TABLE 1.—END-USE AND TECHNICAL PRODUCT REGISTRATION CANCELLATIONS FOR FENAMIPHOS AND PROPANIL

Company Name and Address	EPA Registration Number	Product Name	Chemical Name
Bayer CropScience 2 T.W. Alexander Drive Research Triangle Park, NC 27709	3125–236	NEMACUR 15% Granular	Fenamiphos
	3125–237	NEMACUR 10% Turf and Ornamental Nematicide	Fenamiphos
	3125–269	NEMACUR Technical Nematicide Insecticide	Fenamiphos
	3125–283	NEMACUR 3	Fenamiphos
	3125–333	NEMACUR Concentrate Nematicide-Insecticide	Fenamiphos
Dow AgroSciences, LLC 9330 Zionsville Road Indianapolis, IN 46268–1054	62719–386	STAMPEDE 3E (Alternate Brand)	Propanil
	62719–404	STAMPEDE CM	Propanil
	62719–413	STAMPEDE 80 EDF (Alternate Brand)	Propanil

Pursuant to section 6(f)(1)(A) of FIFRA, Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC submitted requests to amend a number of their propanil end-use and technical product registrations to terminate the small grains (spring (hard red) wheat, oats, spring barley, and durum wheat) use. In the **Federal Register** of June 27, 2003 (FRL–7310–6), EPA published a notice of receipt of written requests by the registrants to voluntarily amend their product registrations to terminate the use of propanil on small grains as summarized in Table 2 below. EPA did not receive any comments on the notice.

TABLE 2.—END-USE AND TECHNICAL PRODUCT REGISTRATION AMENDMENTS FOR PROPANIL

Company Name and Address	EPA Registration Number	Product Name Use Deletions	Use Deletions
Agriliance, LLC 5600 Cenex Drive Inver Grove Heights, MN 55077–1723	9779–338	PROPANIL 80 EDF	Amend label to delete use on spring (hard red) wheat, spring barley, and durum wheat
Dow AgroSciences, LLC 9330 Zionsville Road Indianapolis, IN 46268–1054	62719–386	STAM F–34	Amend label to delete use on spring (hard red) wheat, oats, spring barley, and durum wheat
	62719–403	STAM TECHNICAL 98% DCA	Amend label to delete use on spring (hard red) wheat, oats, spring barley, and durum wheat
	62719–413	STAM 80 EDF	Amend label to delete use on spring (hard red) wheat, oats, spring barley, and durum wheat
RiceCo, LLC 5100 Poplar Avenue, Suite 2428 Memphis, TN 38137–2428	71085–1	RICECO PROPANIL TECHNICAL	Amend label to delete use on spring (hard red) wheat, spring barley, and durum wheat
	71085–21	RICECO PROPANIL TECHNICAL	Amend label to delete use on spring (hard red) wheat, spring barley and durum wheat
	71085–22	PROPANIL 60 DF	Amend label to delete use on spring (hard red) wheat, spring barley, and durum wheat

Any distribution, sale or use of existing stocks of the products identified in Tables 1 and 2 in a manner inconsistent with the terms of this Cancellation Order or the Existing Stock Provisions in Unit IV. of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

B. Amendments to Existing Fenamiphos Product Registrations

In addition to the request to cancel all of their fenamiphos product registrations, Bayer CropScience has also agreed to amend their existing fenamiphos product registrations to:

1. Prohibit all use and formulation for use on extremely vulnerable soils after May 31, 2005.

2. Cap production at 500,000 pounds of fenamiphos manufacturing-use products used in the U.S. for the year ending May 31, 2003.

3. Reduce production by 20% of the previous year's production for each subsequent year during the 5–year phase-out period.

Finally, the Agency approved revised labels submitted by Bayer CropScience implementing risk mitigation measures identified in the Fenamiphos Interim Reregistration Eligibility Decision (IRED) document, which was approved on March 31, 2002.

C. What is the Agency's Authority for Taking this Action?

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations or amendments of the propanil and fenamiphos product and use registrations identified in Tables 1 and 2 of this Cancellation Order. Accordingly, the Agency orders that the propanil and fenamiphos end-use and technical product registrations identified in Table 1 are hereby canceled in accordance with the time frames stipulated in Unit II.A. The Agency also orders that all of the uses identified for deletion in Table 2 are hereby canceled from the end-use and technical product registrations identified in Table 2.

III. Import Tolerances for Fenamiphos

Bayer CropScience anticipates that commodities treated with fenamiphos may continue to be imported into the U.S. after the final effective date of cancellation and after existing stocks in the U.S. are exhausted. As such, Bayer CropScience intends to support import tolerances for banana, citrus, garlic, grape, and pineapple.

IV. Existing Stocks Provisions

For purposes of this Cancellation Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the amendment or cancellation. The existing stocks provisions of this Cancellation Order are as follows.

A. Distribution or Sale of Products Bearing Instructions for Use on Agricultural Crops

The distribution and sale of existing stocks by Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC of any propanil product listed in Table 1 or 2 that bears instructions for use on small grains will not be lawful under

FIFRA after June 28, 2004, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

As of May 31, 2007, all sale and distribution by Bayer CropScience, the sole registrant of fenamiphos products (manufacturing-use and end-use products), shall be prohibited. Persons other than Bayer CropScience may sell and distribute such products until May 31, 2008.

B. Retail and Other Distribution or Sale of Existing Stock of Products

Persons other than Agriliance, LLC; Dow AgroSciences, LLC; and RiceCo, LLC may continue to sell or distribute the existing stocks of any propanil product listed in Table 2 that bears instructions for use on small grains until those stocks are depleted.

C. Use of Existing Stocks

EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Fenamiphos, Pesticides and pests, Propanil.

Dated: November 18, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–30159 Filed 12–9–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0385; FRL–7337–6]

Spiroxamine; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0385, must be received on or before January 8, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address:*waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, pesticide manufacturer or formulator. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 1111)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0385. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the

copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select''search,'' and then key in docket ID number OPP–2003–0385. The system is an''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0385. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0385.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0385. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 26, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer CropScience

PP 3E6783

EPA has received a pesticide petition (PP 3E6783) from Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709roposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Spiroxamine, 8-(1,1-Dimethylethyl)-*N*-ethyl-*N*-propyl-1,4-dioxaspiro[4,5]decane-2-methanamine in or on the raw agricultural commodity hop, dried cone - import at 50.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. A hop plant metabolism study has been conducted, and the nature of the residue is adequately understood. An animal metabolism study is not required since the proposed crop to be treated with Spiroxamine is not fed to livestock.

2. *Analytical method*. A method to determine the total residues of Spiroxamine using gas chromatography has been submitted to the EPA. In addition, Spiroxamine has been evaluated using the multi-residue methodologies as published in the FDA Pesticide Analytical Manual, Volume I.

3. *Magnitude of residues*. Eight field trials were conducted on fields in typical hop-growing regions in Germany to assess the residue levels of Spiroxamine, 8-(1,1-dimethylethyl)-*N*-ethyl-*N*-propyl-1,4-dioxaspiro[4,5]decane-2-methanamine, in/on hops following foliar applications. A formulation containing Spiroxamine (KWG 4168 500 EC) was applied in two spray applications as an emulsifiable concentrate formulation containing 500 grams (g) active ingredient/liter(L), with an application rate of 1.5 liters/hectare (L/ha) and 3,000 L of water/ha. This corresponded to a total applied amount of the active ingredient of 0.750 kilograms (kg)/ha. The applications were carried out at growth stages 75–79 and 77–81, respectively (corresponding to a 9–10 day interval between applications).

Duplicate composite samples of hop cones were collected at a 10–day preharvest interval (PHI) from each plot. In addition, single samples were collected on day 0 and, in four of the trials, on days 6 and 13 after treatment. Hop cones were analyzed both fresh and, on days 10 and 13, after kiln drying. The highest total residue value of Spiroxamine (defined as parent and metabolites converted to aminodiol equivalents) in dried hop cones was 30 ppm (highest individual value)/24.5 ppm (highest average value [HAFT] from two samples in a single trial) at a 10–day PHI. The total Spiroxamine residues in hop cones appeared to decline with time. Note: The residue trials submitted with this petition are being submitted as a national submission in Germany in the European Union (EU). The European procedure for calculating a maximum residue limit (MRL) differs from the procedure used in the USA. Although no final decision has yet been made by the European authorities at the present time, an evaluation of the dried hop cone data according to EU principles leads to an MRL proposal equivalent to 50 ppm total residues of Spiroxamine. In order to avoid possible trade conflicts, it is proposed that the U.S. tolerances be harmonized with the expected EU-MRL.

Samples from two of the above field trials were also processed into beer (four individual processing trials). Average total residues for the dried hop cones prior to processing in these trials were 9.5 and 16 ppm, respectively. In beer, the total residues of Spiroxamine were below the level of detection (i.e., <0.05 ppm) in all four trials.

B. Toxicological Profile

1. *Acute toxicity—KWG 4168 (Spiroxamine) Technical*. The acute oral LD_{50} in male rats was 595 milligrams/kilogram (mg/kg) and in female rats was >500 but <560 mg/kg. The acute dermal LD_{50} in rats was >1,600 and 1,068 mg/kg for males and females, respectively. The 4–hour inhalation LC_{50} in rats was 2.772 and 1.982 milligrams/liter (mg/L) for males and females, respectively. Irritation studies in rabbits revealed Spiroxamine was severely irritating to the skin while not irritating to the eye. Spiroxamine exhibited a skin-sensitizing potential in guinea pigs in both the Magnusson/Kligman maximization test and the Buehler patch test.

2. *Genotoxicty*. The genotoxic action of Spiroxamine was studied in bacteria and mammalian cells with the aid of various *in vitro* test systems (*Salmonella* microsome test, forward mutation assay, cytogenetic study with Chinese hamster ovary cells and unscheduled DNA synthesis test) and in one *in vivo* test (micronucleus test). None of the tests revealed any evidence of a mutagenic or genotoxic potential of Spiroxamine. The compound did not induce point mutations, DNA damage or chromosome aberrations.

3.*Reproductive and developmental toxicity*. In a reproduction study using rats, Spiroxamine was administered for two generations at dietary concentrations of 20, 80 or 300 ppm. Reproductive effects such as reduced litter size at birth and clinical signs of toxicity occurred at the high dose in conjunction with maternal toxicity. The parental and reproductive NOAELs were 20 ppm (equal to 2.13 milligrams per kilogram of bodyweight per day (mg/kg bw/day)) and 80 ppm (equal to 9.19 mg/kg bw/day), respectively.

In a developmental toxicity study in rats, Spiroxamine was administered by oral gavage at dose levels of 0, 10 and 25 mg/kg bw/day and in a supplemental study at doses of 0 and 150 mg/kg bw/day. Severe maternal toxicity occurred at 150 mg/kg bw/day resulting in the deaths of 21 of 25 animals. Embryotoxicity (palatoschisis and omphalocele) was observed at the high dose in conjunction with the severe maternal toxicity. The two lower dose levels did not reveal any maternal or developmental toxicity. The results of these studies showed that the dose of 150 mg/kg bw/day was too high to obtain unequivocal results with respect to embryotoxicity and teratogenicity.

In another oral developmental toxicity study in rats, Spiroxamine was administered by gavage during gestation

at doses of 0, 10, 30 or 100 mg/kg bw/day. Developmental toxicity occurred in conjunction with distinct maternal toxicity at the highest dose tested. The maternal NOAEL was 30 mg/kg bw/day based on reduced body weight gain and feed intake at 100 mg/kg bw/day. The NOAEL for developmental toxicity was 30 mg/kg bw/day based on delayed ossification, slightly reduced fetal weights and three cases of palatoschisis at 100 mg/kg bw/day.

In oral developmental toxicity studies in rabbits, Spiroxamine was administered by gavage during gestation at doses of 0, 5, 20 or 80 mg/kg bw/day and in a supplemental study at doses of 0 and 80 mg/kg bw/day. The maternal NOAEL was 20 mg/kg bw/day based on clinical findings, reduced body weight gain, reduced food intake and lethality at 80 mg/kg bw/day. The NOAEL for developmental toxicity was 20 mg/kg bw/day based on marginal developmental toxicity (reduced fetal weight and a slight increased rate of spontaneous malformations) at the highest dose level.

In a dermal developmental toxicity study in rats, Spiroxamine was administered for 6 hours/day during gestation at doses of 0, 5, 20 or 80 mg/kg. Reduced body weight gain occurred in dams at 20 mg/kg and greater. Dose-related skin reactions were observed at all treated doses. Developmental toxicity, such as wavy ribs, occurred in conjunction with maternal toxicity at the highest dose tested. The NOAELs for systemic and local maternal toxicity were 5 and <5 mg/kg, respectively. The NOAEL for developmental toxicity was 20 mg/kg. Spiroxamine did not reveal any teratogenic potential associated with dermal application.

4. *Subchronic toxicity.*In subacute dermal toxicity studies, rabbits were treated with Spiroxamine at doses ranging from 0.05 to 5 mg/kg bw/day for 6 hours/day over a period of 3 weeks. Systemic effects were not observed in these studies. Local irritation, increased skin fold thickness, and histopathological findings of the skin occurred in these studies. The overall NOAELs for local and systemic effects were 0.2 and 5 mg/kg bw/day, respectively.

In a 90-day feeding study, mice were administered Spiroxamine at dietary concentrations of 0, 20, 80, 320 or 1,280 ppm. Effects observed included clinical signs of toxicity, decreased body weight and food consumption, changes in hematological parameters, hyperplastic changes in the epidermis of the auricles and/or tail, and effects on the liver, kidney, and urinary bladder. The NOAEL was 20 ppm (equal to 6.2 mg/kg bw/day) for male mice based on marginally reduced body weight development at 80 ppm. The NOAEL for female mice was 80 ppm (equal to 28.5 mg/kg bw/day) based on slight morphological findings in the liver at 320 ppm.

In another subchronic mouse study, Spiroxamine was administered by oral gavage at doses of 0, 60, 180 or 240 mg/kg. Effects observed included clinical signs of toxicity, and effects of the liver, urinary bladder and hyperplastic changes in the epidermis of the auricles and tails. Evidence of liver enzyme induction was seen in all treatment groups. The NOAEL was <60 mg/kg bw/day for both males and females.

Spiroxamine was administered to rats in a subchronic feeding study at dietary concentrations of 0, 25, 125 or 625 ppm over a period of 13 weeks. Effects included clinical signs of toxicity, reduced body weight gains, changes in hematological parameters, and effects on the liver, urinary bladder, esophagus and forestomach. The NOAEL for both male and female was 25 ppm (equal to 1.9 and 2.7 mg/kg bw/day, respectively) based on histopathological findings in the esophagus and forestomach at 125 ppm.

In two subchronic feeding studies in dogs, Spiroxamine was administered at dietary concentrations of 0, 25, 750 or 1,500 ppm and at 0, 150, 250 or 500 ppm over a period of 13 weeks. Toxicological effects included changes in clinical chemistries, increased relative liver weights, and histopathological findings in the liver. The overall NOAELs from these studies were 500 ppm (equal to 16.9 mg/kg bw/day) and 750 ppm (equal to 21.29 mg/kg bw/day) for males and females, respectively, based on liver effects.

5.*Chronic toxicity*. In a chronic dog study, Spiroxamine was administered at dietary concentrations of 0, 25, 75, 1,000 or 2,000 ppm for a period of 52 weeks. Effects included opthalmological findings, changes in clinical chemistries, mild anemia, and histopathological findings (eye and liver). The NOAEL for both sexes was 75 ppm (equal to 2.47 and 2.48 mg/kg bw/day for males and females, respectively) based on eye and liver effects.

Rats were administered Spiroxamine for 2 years at dietary concentrations of 0, 10, 70 or 490 ppm. Effects included reduced body weight gains, a slight increase in mortality and histopathological findings in the esophagus and urinary bladder. The NOAEL for both sexes was 70 ppm (equal to 4.22 and 5.67 mg/kg bw/day for males and females, respectively) based on esophagus and urinary bladder effects.

The carcinogenicity potential of Spiroxamine was investigated in rats and mice at maximum dietary concentrations of 490 ppm (equal to 32.81 mg/kg bw/day) and 600 ppm (equal to 149.8 mg/kg bw/day), respectively. No evidence of an oncogenic potential of Spiroxamine was found in the long-term studies in rats and mice.

6. *Animal metabolism*. Rats were gavaged with 1 or 100 mg/kg radio-labeled technical Spiroxamine. Seventy percent of the oral low dose was absorbed. Within 48 hours of dosing, over 97% of the dose was excreted in urine and feces. At sacrifice (48 hours post dosing), the radioactivity remaining in the body was below 1% in the low dose groups and approximately 1% and 2% in the male and female rats, respectively, from the high dose group. Concentrations found in tissues and organs were relatively low: i.e., they do not exceed 0.04 micrograms/gram (µg/g). The highest concentrations were found in liver, thymus and adrenals. Slightly smaller concentrations were observed in the thyroid, spleen, fat, ovaries and uterus. The main metabolite in all dose groups is Spiroxamine oxidized to the carboxylic acid in the t-butyl-moiety. The identification rate was approximately 77% of the recovered radioactivity in all dose groups.

7. *Metabolite toxicology*. Toxicological studies have been conducted on KWG 4168 N-oxide, a plant and animal metabolite of Spiroxamine. In an acute oral toxicity study on KWG 4168 N-oxide using female rats, the LD_{50} was 707 mg/kg. In a subacute toxicity study, rats were administered KWG 4168 N-oxide at dietary concentrations of 0, 30, 150 and 1,000 ppm. The highest concentration resulted in treatment-related effects. The main targets were the epithelia of the digestive tract and the urinary bladder. A mild liver enzyme induction was observed without any correlating gross- or micropathological findings. In a subchronic study, rats were administered KWG 4168 N-oxide at dietary concentrations of 0, 25, 125 and 625 ppm, and KWG 4168 at 625 ppm. Toxic effects were observed at 625 ppm for both test substances. Similar effects included delayed body weight development, changes in clinical chemistries and micropathological findings of the esophagus and stomach. The effects were less pronounced for KWG 4168 N-oxide when compared to KWG 4168 (parent). Effects noted only in animals treated with KWG 4168 included changes in hematological

parameters and micropathological findings of the urinary bladder (females). The mutagenic potential of KWG 4168 N-oxide was studied *in vitro* in bacteria and mammalian cells. It did not cause mutations *in vitro* in the Ames assay, the V–79–HPRT gene mutation assay, or produce clastogenicity in the chromosome aberration assay with or without metabolic activation.

8. *Endocrine disruption*. The toxicology data base for Spiroxamine is current and complete. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- or long-term exposure. These studies revealed no primary endocrine effects due to Spiroxamine.

C. Aggregate Exposure

1. *Dietary exposure*. An aggregate risk assessment was conducted for all pending uses (grape, hop (domestic and imported) and banana (imported)) to assess the potential acute and chronic dietary exposure resulting from applications of Spiroxamine to these crops. Novigen Sciences, Inc.'s Dietary Exposure Evaluation Model (DEEM®) was used to estimate the chronic and acute dietary exposure.

For the acute dietary analysis, the proposed acute reference dose (aRfD) of 0.1 mg/kg/day was used. This aRfD is based on NOELs of 10 mg/kg from an acute oral toxicity and an acute neurotoxicity screening study and applying a 100–fold uncertainty factor.

For the chronic dietary analysis, the proposed chronic reference dose (cRfD) of 0.02 mg/kg/day was used. This cRfD is based on a parental toxicity NOEL of 2.13 mg/kg/day from the two-generation reproduction study and the application of a 100–fold uncertainty factor.

Results from the acute and chronic dietary exposure analyses described below demonstrate a reasonable certainty that no harm to the overall U.S. population or any population subgroup will result from the use of Spiroxamine on grape, hop and banana.

i. *Food*. An acute, Tier 1 dietary (food) risk assessment was conducted using the highest residue values and 100% crop treated. The estimated percent of the aRfD for the overall U.S. population (all seasons) at the 95 percentile is 8.5%. The most highly exposed population subgroup, non-nursing infants, had an exposure equal to 33.3% of the aRfD at the 95 percentile. These exposure estimates in are within EPA's criteria of acceptability.

A chronic, Tier 1 dietary (food) risk assessment was conducted using average residue values and 100% crop treated. The estimated percent of the cRfD for the overall U.S. population (all seasons) is 9.1%. For the most highly exposed population subgroup, children 1 to 6) years old, the exposure consumed 30.6% of the cRfD. These exposure estimates are within EPA's criteria of acceptability.

ii. *Drinking water*. No monitoring data are available for residues of Spiroxamine in ground water, and EPA has established no health advisory levels or maximum contaminant levels for residues of Spiroxamine in drinking water.

Studies show low to no soil mobility for Spiroxamine and its primary metabolites. In addition, field studies show that Spiroxamine and its degradates do not leach below the 6–inch depth level, and show very low potential to leach into ground water. Therefore, it can be concluded with reasonable certainty that no harm will result from acute or chronic aggregate exposure to Spiroxamine residues in drinking water.

2. *Non-dietary exposure*. Spiroxamine is not registered nor are registrations pending for uses that would result in non-dietary exposure.

D. Cumulative Effects

Spiroxamine belongs to a new class of chemistry know as spiroketalamines. Therefore, for this tolerance petition, it is assumed that Spiroxamine does not have a common mechanism of toxicity with other substances and only the potential risks of Spiroxamine in its aggregate exposure are considered.

E. Safety Determination

1. *U.S. population*. Based on the above aggregate food exposure estimates for the overall U.S. population (8.5% of the aRfD and 9.1% of the cRfD), the low potential for Spiroxamine and its degradates to leach into ground water, and the completeness of the toxicity data base, there is reasonable certainty that no harm to the U.S. population will result from aggregate exposure to Spiroxamine.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of Spiroxamine, data from developmental toxicity studies in mice, rats, rabbits and a two-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Based on the above, aggregate food exposure estimates for the most highly exposed population subgroups, i.e., non-nursing infants and children (1–6 years old), consumed 33.3% and 30.6% of the aRfD and cRfD, respectively. This, in combination with the low potential for Spiroxamine and its degradates to leach into ground water, and on the completeness of the toxicity data base, there is reasonable certainty that no harm to infants and children will result from aggregate exposure to Spiroxamine.

F. International Tolerances

There are no established Codex, Canadian or Mexican MRLs for Spiroxamine.

[FR Doc. E3–00489 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0362; FRL–7335–5]

Alkyl (C_{10}–C_{16}) Polyglycosides; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0362, must be received on or before January 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: James Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0731; e-mail address:*parker.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0362. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0362. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0362. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access''

system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0362.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0362. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and record keeping requirements.

Dated: November 21, 2003.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Cognis Corporation and represents the view of the petitioner. The summary may have been edited by the EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Cognis Corporation

PP 4E4332

EPA has received a pesticide petition (PP 4E4332) from Cognis Corporation, 4900 Este Avenue, Cincinnati, OH 45232 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance exemption for residues of alkyl (C_{10}–C_{16}) polyglycosides (CAS Reg. No. 110615-47-9) when used as an inert ingredient in a pesticide product. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolis.* No plant metabolism studies have been submitted in support of this petition since an exemption from tolerance is being requested. In addition, alkyl ($C_{10–16}$) polyglycosides are expected to rapidly degrade to sugars and fatty alcohols in treated plants.

2. *Analytical method.* Since the petitioner has requested a tolerance exemption, a residue analytical method for alkyl ($C_{10–16}$) polyglycosides in food crops is not required.

3. *Magnitude of residues.* Due to the very low toxicity exhibited by the alkyl polyglycosides, in either acute or sub-chronic studies, and the rapid metabolism of these substances to sugars and fatty alcohols, no field residue studies were conducted.

B. Toxicological Profile

1. *Acute toxicity.* Based on acute studies conducted with alkyl ($C_{12–14}$) polyglycosides, the acute toxicity of alkyl ($C_{10–16}$) polyglycosides is expected to be of a very low order. The acute oral LD_{50} for alkyl ($C_{12–14}$) polyglycosides is

greater than 5 gram/kilogram (g/kg) body weight and the acute dermal LD_{50} is greater than 2 g/kg body weight. Concentrations of less than 30% alkyl ($C_{12–14}$) polyglycosides are non-irritating to skin. Alkyl ($C_{12–14}$) polyglycosides are not dermal sensitizers.

2. *Genotoxicty.* Based on studies conducted with alkyl ($C_{12–14}$) polyglycosides, alkyl ($C_{10–16}$) polyglycosides are considered non-mutagenic. In the bacterial gene mutation study (Ames test), alkyl ($C_{12–14}$) polyglycosides did not cause an increase in revertants, compared to controls, with or without metabolic activation. In the *in-vitro* cytogenetic study, alkyl ($C_{12–14}$) polyglycosides did not cause an increase in chromosomal aberrations, compared to controls, with or without metabolic activation.

3. *Reproductive and developmental toxicity.* In a developmental toxicity study, test animals were treated with alkyl ($C_{12–14}$) polyglycosides, by gavage, on days 6 through 15 of gestation at doses of 0, 100, 300 and 1,000 mg/kg body weight. There were no maternal or fetal effects noted in any of the test groups. Based on this study, both the maternal and developmental no observed effect level (NOEL) for alkyl ($C_{12–14}$) polyglycosides is greater than 1,000 milligrams/kilogram (mg/kg) body weight.

4. *Subchronic toxicity.* In a sub-chronic (90–day) feeding study, test animals were treated with alkyl ($C_{12–14}$) polyglycosides at doses of 0, 250, 500 and 1,000 mg/kg body weight. The only adverse effect observed in the study, in the mid (500 mg/kg) and high dose (1,000 mg/kg) groups, was reversible dose-dependent irritation and ulceration of the mucous membranes of the forestomach. Based on this study, the no observed adverse effect level (NOAEL) is 1,000 mg/kg body weight and the NOEL is 250 mg/kg/body.

5. *Animal metabolism.* Metabolism studies conducted in the mouse with closely related alkyl polyglycosides show that the -glycosidic bond of the alkyl polyglycosides is rapidly hydrolyzed in the intestine and liver. The degradates are sugars and long-chain alcohols, which then undergo carbohydrate and lipid metabolism.

6. *Metabolite toxicology.* The metabolites of alkyl ($C_{10–16}$) polyglycosides are glucose and fatty alcohols, neither of which present any toxicity concerns.

7. *Endocrine disruption.* There is no information from studies conducted by the Cognis Corporation nor from the published literature which associates the alkyl polyglycosides with endocrine disruption.

C. Aggregate Exposure

1. *Dietary exposure.* A dietary exposure assessment for alkyl (C*10–16*) polyglycosides has not been conducted because the alkyl polyglycosides, as a class of compounds, do not present any toxicological effects of concern. In addition, alkyl ($C_{10–16}$)polyglycosides are expected to be rapidly degraded to glucose and fatty alcohols.

i. *Food.* Crop levels of alkyl (C*10–16*) polyglycosides have not been determined since a tolerance exemption is being requested. Moreover, even if residues of alkyl ($C_{10–16}$) polyglycosides do occur on food crops these residues are of little concern since the alkyl polyglycosides are practically non-toxic.

ii. *Drinking water.* Minimal, if any, residues of alkyl ($C_{10–16}$) polyglycosides are expected to occur in drinking water since alkyl polyglycosides should be rapidly (and completely) biodegraded in soils.

2. *Non-dietary exposure.* Non-dietary (residential) exposure to alkyl ($C_{10–16}$) polyglycosides from the use of this substance as an inert ingredient in pesticide products is anticipated to be insignificant since only short-term exposure will be involved and dermal absorption through the skin is expected to be minimal.

D. Cumulative Effects

No cumulative adverse effects are expected from long-term exposure to alkyl ($C_{10–16}$) polyglycosides since the only affect observed in the safety studies conducted with the alkyl polyglycosides was localized irritation.

E. Safety Determination

1. *U.S. population.* The safety studies performed with the alkyl polyglycosides clearly demonstrate that this class of compounds are practically non-toxic. The only adverse effect observed in any of the studies conducted with the alkyl polyglycosides was localized, reversible irritation of the forestomach in the sub-chronic feeding study. Consequently, the use of the alkyl ($C_{10–16}$) polyglycosides as an inert ingredient in pesticidal formulations applied to growing crops is not anticipated to result in any adverse effects.

2. *Infants and children.* There is no evidence from the safety studies sponsored by Cognis, particularly the developmental toxicity study, nor from the published literature of any unique susceptibilities of infants and/or children to alkyl polyglycoside exposure. Based on the extremely low toxicity of the alkyl polyglycosides no adverse effects on infants and/or children from the use of alkyl ($C_{10–16}$) polyglycosides as an inert ingredient in pesticidal formulations applied to growing crops is anticipated.

F. International Tolerances

There are no approved CODEX maximum residue levels (MRLs) established for residues of alkyl ($C_{10–16}$) polyglycosides.

[FR Doc. 03–30522 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0361; FRL–7336–2]

Bacillus thuringiensis Cry2Ab2 Protein and the Genetic Material Necessary for its Production in Cotton; Notice of Filing a Pesticide Petition to Amend a Tolerance Exemption for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0361, must be received on or before January 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0361. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0361. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0361. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that

you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0361.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0361. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 19, 2003.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Monsanto Company and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Monsanto Company

PP 7F4888

EPA has received a request (PP 7F4888) from Monsanto Company, 800 N. Lindberg Blvd., St. Louis, MO 63167, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by removing the time limitation for the exemption from the requirement of a tolerance for the plant-incorporated protectant *Bacillus thuringiensis* (*Bt*) Cry2Ab2 protein and the genetic material necessary for its production in cotton or on cotton. The tolerance exemption was originally requested under pesticide petition number (PF 7F4888).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Monsanto Company has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Monsanto Company and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Using plant molecular biology methods, Monsanto developed the Cry2Ab2 protein expressed in cotton plants. The production of Cry2Ab2 protein provides highly effective and selective control of *lepidopteran* insect pests in cotton. Plants producing this protein are derived from plants transformed with the Cry2ab2 gene and the genetic material necessary for its expression in cotton. Cotton plants using the Cry2Ab2 protein provide increased spectrum of activity over present products and in combination with existing technologies has the potential to increase the durability of the *Bt* proteins currently used for insect protection in cotton and increase the opportunities for integrated pest management.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The Cry2Ab2 protein is derived from *Bacillus thuringiensis* class of Cry2A proteins which are designated to have a greater than 95% sequence identity. Data characterizing the Cry2Ab2 protein used in cotton have been submitted to EPA.

Because it would be difficult, or impossible, to extract sufficient biologically active protein from plants to perform safety tests, Cry2Ab2 protein from bacteria was produced. Product analysis data show that the microbially expressed and purified Cry2Ab2 delta-enodtoxin is sufficiently similar to that expressed in the plant to be used for safety assessment purposes. Plant- and microbially produced Cry2Ab2 delta-endotoxins were shown by these studies to have similar molecular weights and immunoreactivity (SDS-PAGE and Western blots), to lack detectable post-translational modification (glycosylation), to have identical amino acid sequences in the N-terminal region and to have similar results in bioassays against *Heliothus vierscens* and *Heliocoverpa zea.* The combined results of the above studies indicate a high probability that these two sources produce proteins that are essentially identical by available protein analytical assays.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* The Cry2Ab2 protein is derived from *Bacillus thuringiensis* class of Cry2A proteins which are designated to have a greater than 95% sequence identity. Data characterizing the Cry2Ab2 protein used in cotton have been submitted to EPA, because it would be difficult, or impossible, to extract sufficient biologically active protein from plants to perform safety tests, Cry2Ab2 protein from bacteria was produced. Product analysis data show that the microbially expressed and purified Cry2Ab2 delta-enodtoxin is sufficiently similar to that expressed in the plant to be used for safety assessment purposes. Plant- and microbially produced Cry2Ab2 delta-endotoxins were shown by these studies to have similar molecular weights and immunoreactivity (SDS-PAGE and Western blots), to lack detectable post-translational modification (glycosylation), to have identical amino acid sequences in the N-terminal region and to have similar results in bioassays against *Heliothus vierscens* and *Heliocoverpa zea.* The combined results of the above studies indicate a high probability that these two sources produce proteins that are essentially identical by available protein analytical assays.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* A validated extraction and qualitative analytical method (ELISA) for the detection of Cry2Ab2 protein has been submitted to the Agency.

C. Mammalian Toxicological Profile

The data submitted regarding potential health effects of Cry2Ab2 include information on the characterization of the expressed protein in cotton. The acute oral toxicity data submitted support the determination that the Cry2Ab2 protein is non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels.

The acute oral toxicity data submitted support the prediction that the Cry2Ab2 protein would be non-toxic to humans. Male and female mice (10 of each) were dosed with 67,359 and 1,450 milligrams/kilogram body weight (mg/kg bwt) of Cry2Ab2 protein. Outward clinical signs were observed and body weights recorded throughout the 14–day study. Gross necropsies performed at the end of the study indicated no findings of toxicity attributed to exposure to the test substance. No mortality or clinical signs attributed to the test substance were noted during the study. When proteins are toxic, they are known to act via acute mechanisms and at very lose dose levels (Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacolocy 15, 3–9 (1992)). Therefore, because no effects were shown to be caused by the Cry2Ab2 proteins, even at relatively high dose levels, the Cry2Ab2 protein is not considered to be toxic. Furthermore, amino acid sequence comparisons showed no similarity between Cry2Ab2 proteins and known toxic proteins available in public protein data bases.

Data were submitted that demonstrate that the Cry2Ab2 delta-toxin is rapidly degraded by gastric fluid *in vitro.* In a solution of simulated gastric fluid (U.S. Pharmacopeia), complete degradation of detectable Cry2Ab2 protein occured within 15 seconds. Incubation in simulated intestinal fluid resulted in a 50 kDa protein digestion product. A comparison of amino acid sequences of know allergens uncovered no evidence of any homology with Cry2Ab2.

Collectively, the submitted data on Cry2Ab2 protein, as well as the history of safe use with other plant-expressed and microbially produced *Bacillus thuringiensis* products, establishes the safety of the Cry2Ab2 protein.

The genetic material necessary for the production of the Cry2Ab2 protein is nucleic acid (DNA) which is common to all forms of plant and animal life and there is no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Monsanto has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the protein residue and to other related substances. These considerations include dietary exposure under the existing tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectant residue, and exposure from non-occupational sources. Oral exposure at very low levels may occur, but lack of mammalian toxicity and digestibility has been demonstrated.

ii. *Drinking water.* Movement of the Cry2Ab2 protein to drinking water is highly unlikely given that Cry proteins are known to rapidly degrade in the soil. Oral exposure at very low levels may occur but lack of mammalian toxicity and the digestibility of this protein have been demonstrated.

2. *Non-dietary exposure.* Exposure to Cry2Ab2 proteins via dermal exposure or inhalation is unlikely given that these proteins are contained in the plant and are not exuded and are not volatile. Therefore, worker and bystander exposure resulting from plant pesticides will be negligible and would be unlikely to add measurably to any worker or bystander exposure resulting from microbial or other *Bacillus thuringiensis* formulations.

E. Cumulative Exposure

Available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity have been submitted. Because there is no indication of mammalian toxicity from this plant-incorporated protectant, there are no cumulative effects.

F. Safety Determination

1. *U.S. population.* There is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the Cry2Ab2 protein and the genetic material necessary for its production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. This conclusion is based on the low toxicity of the protein, lack of allergenicity, digestibility, and low dietary exposure.

2. *Infants and children.* Nondietary exposure to infants and children is not anticipated due to the patterns of use for

this plant-incorporated protectant. Submitted data provide no evidence that Cry2Ab2 protein poses any adverse threshold effects that would warrant application of an additional safety factor for the protection of infants and children.

G. Effects on the Immune and Endocrine Systems

The lack of Cry2Ab2 toxicity in high dose acute oral studies and its rapid degradation in a mammalian digestive system suggests minimal risk for adverse effects on the immune system. This pesticidally active ingredient is a protein, derived from sources that are not known to exert an influence on the endocrine system.

H. Existing Tolerances

Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary for its production in corn and cotton is exempt from the requirement of a tolerance when used as a plant-pesticide in the food and feed commodities of field corn, sweet corn, popcorn, cottonseed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts (40 CFR 180.1215). Unless amended, this exemption will expire on May 1, 2004.

I. International Tolerances

No Codex maximum residue levels have been established for this plant-incorporated protectant.

[FR Doc. E3–00490 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0351; FRL–7332–7]

Notice of Filing a Pesticide Petition to Establish an Exemption from the Requirement of a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0351, must be received on or before January 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305.5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0351. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in

EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0351. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0351. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0351.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0351. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 17, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Seeds, Incorporated

PP 3F6761

EPA has received a pesticide petition (3F6761) from Syngenta Seeds, Incorporated, P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the plant-pesticide inert ingredient hygromycin B phosphotransferase (APH4) marker protein and the genetic material necessary for it production, proposed for use as a plant-incorporated protectant formulation. APH4 protein is anaminocyclitol phosphotransferase that catalyzes the phosphorylation of hygromycin and closely related aminoglycoside antibiotics. Expression of the APH4 gene in plant cells allows for growth and selection of transformed cells in the presence of hygromycin B. APH4 has no insecticidal activity.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Syngenta Seeds, Incorporated has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Syngenta Seeds, Incorporated and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Hygromycin B phosphotransferase (APH4) marker protein is proposed for use as a plant-incorporated protectant formulation inert ingredient. APH4 protein is an aminocyclitol phosphotransferase that catalyzes the phosphorylation of hygromycin and closely related aminoglycoside antibiotics. Expression of the APH4 gene in plant cells allows for growth and selection of transformed cells in the presence of hygromycin B. APH4 has no insecticidal activity.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The APH4 gene in event COT102 cotton plants was derived from a plasmid harbored by a hygromycin-resistant isolate of *E. coli*, and encodes a 341 amino-acid enzyme, hygromycin B phosphotransferase APH4. Hygromycin B phosphotransferases with significant homology to the APH4 protein in event COT102 plants have also been indentified in other microbes including *Streptomyces hygroscopicus*, the source of hygromycin B.

APH4 has a molecular weight of *ca.* 42,000 and catalyzes the phosphorylation of the 4-hydroxyl group on the hyosamine moiety of hygromycin B, thereby inactivating it. The enzyme has a narrow range of substrates, in that it phosphorylates hygromycin B, hygromycin B_2 and the closely-related antibiotics destomycin A and destomycin B, but does not phosphorylate other aminocyclitol or aminoglycoside antibiotics including neomycin, steptomycin, gentamycin, kanamicin, spectinomycin, tobramycin, and amikacin. Hygromycin B is not used in human clinical therapy, but is principally used as an antihelminthic agent in swine and poultry feeds.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* A determination of the magnitude of residue at harvest is not required for residues exempt from tolerances. However, the petitioner has provided data on the quantity of APH4 protein measured in various plant parts including seeds of VIP3A cotton, as measured by enzyme linked immunosorbent assay (ELISA). APH4 was either not detectable in most COT102 plant tissues or the levels were too low to quantify. Pollen was the only tissue in which quantifiable levels were measured.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method is not required because this petition requests an exemption from tolerances. However, the petitioner has submitted an analytical method for detection of the APH4 protein by ELISA analysis.

C. Mammalian Toxicological Profile

Syngenta Seeds is providing the results of a mammalian toxicology study, *in vitro* digestibility study, and bioinformatics evaluations conducted on the selectable marker protein APH4. These studies, summarized herein, demonstrate the lack of toxicity of the APH4 protein following acute oral exposure to mice, rapid degradation of APH4 upon exposure to simulated gastric intestinal fluids, and the lack of amino acid sequence similarity of the APH4 protein to proteins known to be mammalian toxins or human allergens.

When proteins are toxic, they are known to act *via* acute mechanisms and at very low doses (Sjoblad, R.D., J.T. McClintock and R. Engler (1992) ''Toxicological Considerations for Protein Components of Biological Pesticide Products.'' *Regulatory Toxicol. Pharmacol.* 15: 3–9). Therefore, when a protein demonstrates no acute oral toxicity in high-dose testing using a standard laboratory mammalian test species, this supports the determination that the protein will be non-toxic to humans and other mammals, and will not present a hazard under any realistic exposure scenario, including long-term exposures.

Because it is not possible to extract sufficient APH4 protein from transformed plants for toxicology studies, APH4 protein was produced in recombinant *E. coli* by over-expressing the same APH4 gene that was introduced into VIP3A cotton event COT102. The APH4 gene was cloned into the inducible, over-expression pET-3a® vector (Novagen, Madison, WI) in *E. coli* BL21DE3pLysS. The APH4 protein, as encoded in this vector, was identical in amino acid sequence to that encoded by the plant transformation vector, pCOT1, except for an additional 11 amino acids from the T7 Tag™ and 3 amino acids from the vector polylinker. Following purification from *E. coli*, dialysis and lyophilization, the resulting sample, designated Test Substance APH4–0102, was estimated by ELISA to contain *ca.* 42.6% APH4 protein by weight. The test material was confirmed to be enzymatically active.

An acute mouse oral toxicity study was conducted at the Syngenta Central Toxicology Laboratory (Alderley Park,

Macclesfield, Cheshire, UK) according to EPA Test Guideline OPPTS 870.1100. The test substance APH4–0102 (see above description of test substance) was administered to 5 male and 5 female mice (strain Alderely Park Albino mouse (APfCD–1); 8–9 weeks old) *via* a gavage dose of 1,828 milligrams/kilogram (mg/kg) body weight. The test substance contained *ca.* 42.6% APH4 protein by weight. Therefore, the mice received *ca.* 779 mg APH4/kg body weight. A negative control group (5 mice/sex) concurrently received the dosing vehicle alone, a suspension of 1% methylcellulose, at the same dosing volume as used for the test material mixture. Food was provided *ad libitum*, except during the *ca.* 1–hour prior to dosing, when the animals were fasted. Water was provided *ad libitum* throughout the study. Observations for mortality and clinical/behavioral signs of toxicity were made at least twice on the day of dosing, and at least once daily thereafter for 14 days. Detailed clinical observations were made for each animal at each observation time. Body weights were recorded daily and food consumption was recorded weekly. Surviving animals were euthanized 14 days post dosing and subjected to gross necropsy. Organ weights (brain, liver with gall bladder, kidneys, and spleen) were recorded and principal tissues were processed for microscopic examination.

No mortalities occurred during the study, and no clinical signs of toxicity were observed in either the test or control groups. There were no treatment-related effects on body weight, food consumption, or organ weights, nor were any treatment-related effects observed following macroscopic or microscopic examination. APH4–0102 is not acutely toxic to mice. There is no evidence of toxicity of the test substance at 1,828 mg APH4–0102/kg body weight, representing *ca.* 779 mg APH4 protein/kg body weight. The estimated lethal dose $(LD)_{50}$ value for pure APH4 protein in male and female mice is >779 mg/kg body weight, the single dose tested.

The APH4 protein shows no homology to proteins known to be mammalian toxins or human allergens; is not derived from a source known to produce allergens; is not targeted to a cellular pathway for glycosylation in the plant; and is rapidly degraded upon exposure to simulated gastric and intestinal fluids.

The genetic material necessary for the production of APH4 as an inert ingredient are the nucleic acids, deoxyribonucleic acid (DNA) which comprise genetic material encoding this protein and its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the protein, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life and the Agency has previously stated that they are not aware of an instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids, as they appear in the subject inert ingredient, have been adequately characterized. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject inert plant pesticidal ingredient.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Derivatives of cottonseed (*e.g.*, refined cottonseed oil) and fiber (*e.g.*, linters, which are essentially 100% cellulose) are used in some food products. However, APH4 was not detected in most of the samples of COT102–derived cottonseed analyzed or any of the cotton fiber samples analyzed. In the few cottonseed samples in which APH4 was detectable, the quantities were below the limit of quantification (LOQ) (<137 nanogram (ng) APH4/grams (g) fresh weight (wt); <150 ng APH4/g dry wt.). It is expected that any trace quantities of APH4 in cottonseed will be eliminated by standard seed processing methods. As demonstrated by the analysis of cottonseed products for VIP3A protein, no VIP3A was detected in refined cottonseed oil from COT102–derived plants, despite the presence of *ca.* 3 micrograms VIP3A/g seed (fresh or dry wt.). Additionally, no protein of any kind was detected in the same sample of refined cottonseed oil. It can be concluded that APH4, as produced in COT102–derived cotton plants, does not pose a risk of becoming allergenic *via* food, because there will be no exposure *via* food. Additionally, the APH4 protein shows no amino acid sequence homology to known allergens; is not derived from a source known to produce allergens; is not targeted to a cellular pathway for glycosylation in the plant; and is rapidly degraded upon exposure to simulated gastric and intestinal fluids.

ii. *Drinking water.* No exposure to APH4 and the genetic material necessary for its production as an inert ingredient *via* drinking water are expected. The protein is incorporated into the plant and will therefore not be available to drinking water sources.

2. *Non-dietary exposure.* Non-dietary exposure is not anticipated, due to the proposed use pattern of the product. Exposure *via* dermal or inhalation routes is unlikely because the inert ingredient is contained within plant cells. However, if exposure were to occur by non-dietary routes, no risk would be expected because the APH4 protein is not toxic to mammals.

E. Cumulative Exposure

Because there is no indication of mammalian toxicity to the APH4 protein, it is reasonable to conclude that there are no cumulative effects for this inert ingredient.

F. Safety Determination

1. *U.S. population.* The lack of mammalian toxicity at high levels of exposure to the APH4 protein demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated *via* consumption of processed food products produced from VIP3A cotton. Moreover, little to no human dietary exposure to APH4 protein is expected to occur *via* VIP3A cotton. Due to the lack of toxicity of the APH4 protein and its very low potential for allergenicity, dietary exposure is not anticipated to pose any harm for the U.S. population. No special safety provisions are applicable for consumption patterns or for any population sub-groups.

2. *Infants and children.* Syngenta has evaluated the acute toxicity data generated on APH4, the lack of homology to known allergens or toxins, and the limited exposure to this protein based on the residue profile and limited number of food/feed products resulting from cotton and has determined that there is ample evidence to indicate a reasonable certainty of no harm to infants and children as a result of the use of this product.

G. Effects on the Immune and Endocrine Systems

The inert ingredient APH4 is a protein, derived from sources that are not known to exert an influence on the endocrine or immune systems.

H. Existing Tolerances

The registrant is not aware of any known existing tolerances or exemptions for APH4 and the genetic material necessary for its production as an inert ingredient.

I. International Tolerances

The registrant in not aware that any codex maimum residue levels exist for

the APH4 protein and the genetic material necessary for its production.

[FR Doc. 03–30520 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0006; SWH–FRL–7595–1]

Recovered Materials Advisory Notice V

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft document for review.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) today is providing notice of the issuance of a draft Recovered Materials Advisory Notice (RMAN V). The RMAN provides guidance to procuring agencies for purchasing certain items containing recovered materials. Under section 6002 of the Resource Conservation and Recovery Act of 1976, EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items. Elsewhere in today's **Federal Register,** EPA is proposing to revise the current compost designation to include compost made from manure or biosolids, and designate fertilizers made from recovered organic materials. Also in that **Federal Register** notice, EPA is proposing to consolidate all compost designations under one item called ''compost made from recovered organic materials.''

DATES: EPA will accept public comments on the recommendations contained in the draft RMAN V until February 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0006. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item recommendations, contact Sue Nogas at (703) 308–0199.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0006. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper;, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA'S electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these later comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information

provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from theEPA Internet home page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2003–0006. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–2003–0006. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: OSWER Docket, EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0006.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Attention Docket ID No. RCRA–2003–0006. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket. Send or deliver information identified as CBI only to the following address: Document Control Officer (5305W), Office of Solid Waste, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0006. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Is the Statutory Authority for This Proposed Action?

The draft Recovered Materials Advisory Notice (RMAN V) is issued under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended; and 42 U.S.C. 6912(a) and 2962. EPA is also issuing draft RMAN V to comply with section 502 of Executive Order 13101, ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition'' (63 FR 49643, September 14, 1998).

III. What Is the Background for This Proposed Action?

Section 6002 of RCRA establishes a Federal buy-recycled program. RCRA section 6002(e) requires EPA to (1) designate items that are or can be made with recovered materials and (2) prepare guidelines to assist procuring agencies in complying with affirmative procurement requirements set forth in paragraphs (c), (d), and (i) of section 6002. Once EPA has designated items, section 6002 requires that any procuring agency using appropriated Federal funds to procure those items must purchase them composed of the highest percentage of recovered materials practicable. For the purposes of RCRA section 6002, procuring agencies include the following: (1) Any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement, or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of RCRA section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000.

Executive Order 13101 directs EPA to designate items in a Comprehensive Procurement Guideline (CPG) and publish guidance that contains EPA's recommended recovered content levels for the designated items in the RMANs. The Executive Order further directs EPA to update the CPG every 2 years and the RMANs periodically to reflect changes in market conditions. EPA codifies the CPG designations in the Code of Federal Regulations (CFR), but because the recommendations are guidance, the RMANs are not codified in the CFR. This process enables EPA to revise its recommendations in response to changes in a product's availability or recovered materials content so as to provide timely assistance to procuring agencies in fulfilling their RCRA section 6002 responsibilities.

The first CPG (CPG I) was published on May 1, 1995 (60 FR 21370): It established eight product categories, designated 19 new items in seven of

those categories, and consolidated five earlier item designations.[1] At the same time, EPA also published a notice of availability of the first RMAN (RMAN I) (60 FR 21386). On November 13, 1997, EPA published CPG II (62 FR 60962), which designated an additional 12 items. At the same time, EPA published an RMAN II notice (62 FR 60975). Paper Products RMANs were issued on May 29, 1996 (61 FR 26985), and June 8, 1998 (63 FR 31214). On January 19, 2000, EPA published CPG III (65 FR 3070), which designated an additional 18 items. At the same time, EPA published an RMAN III notice (65 FR 3082). On August 28, 2001, EPA published a proposed CPG IV (66 FR 45256), which proposed to designate an additional 11 items. At the same time, EPA published a draft RMAN IV notice (66 FR 45297). EPA expects to promulgate the final CPG IV and sign a notice concerning the availability of RMAN IV in the near future. For more information on CPG, go to the EPA Web site at *http://www.epa.gov/cpg/.*

Today, in CPG V, EPA is proposing to revise the current compost designation to include compost made from manure or biosolids, and designate fertilizers made from recovered organic materials. EPA is also proposing to consolidate all compost designations under one item called ''compost made from recovered organic materials.'' Once finalized, today's RMAN V will serve as companion guidance to the previous RMANs.

EPA, once again, wants to stress that the recommendations in this notice are just that—recommendations and guidance to procuring agencies in fulfilling their obligations under RCRA section 6002. The designation of an item as one that is or can be produced with recovered materials and the inclusion of recommended content levels for an item in the RMAN does not compel the procurement of an item when the item is not suitable for its intended purpose. RCRA section 6002 is explicit in this regard when it authorizes a procuring agency not to procure a designated item which ''fails to meet the performance standards set forth in the applicable specification or fails to meet the reasonable performance standards of the procuring agencies.'' Section 6002(1)(B), 42 U.S.C. 6962(c)(B).

[1] Between 1983 and 1989, EPA issued five guidelines for the procurement of products containing recovered materials, which were previously codified at 40 CFR parts 248, 249, 250, 252, and 253. These products include cement and concrete containing fly ash, paper and paper products, re-refined lubricating oils, retread tires, and building insulation.

A. What Is the Methodology for Recommending Recovered Materials Content Levels?

In providing guidance in the RMANs, the Executive order directs EPA to present ''the range of recovered materials content levels within which the designated recycled items are currently available.'' Based on the information available to the Agency, EPA generally recommends ranges that encourage manufacturers to incorporate the maximum amount of recovered materials into their products without compromising competition or product performance and availability. EPA recommends that procuring agencies use these ranges, in conjunction with their own research, to establish minimum content standards for use in purchasing the designated items. EPA generally recommends ranges rather than minimum content standards. The items for which recommendations are being proposed today are generally made exclusively from recovered materials (*e.g.,* manure, biosolids, etc.). Therefore, recommended ranges of recovered materials are not appropriate for these items.

EPA reviewed publicly available information, information obtained from product manufacturers, and information provided by other government agencies regarding the use of recovered materials in the items proposed for designation in CPG V.

More information on EPA's methodology for issuing RMANs in contained in ''Background Document for Proposed CPG V and Draft RMAN V,'' found in the RCRA public docket for this notice and on EPA's CPG Web site at *http://www.epa.gov/cpg.*

B. What Are the Definitions of Terms Used in This Proposed Action?

Definitions for the revised definition of ''compost'' and the new definition of ''organic fertilizer'' covered in this RMAN V are included in the proposed CPG V published in the proposed rule section of today's **Federal Register**.

C. What Comments Is EPA Requesting?

EPA requests comments, including additional supporting documentation and information, on the types of recovered materials identified in the item recommendations, and other recommendations, including specifications, for purchasing the designated items containing recovered materials.

IV. Supporting Information and Accessing Internet

The index of supporting materials for today's proposed CPG V is available in the OSWER Docket and on the Internet. The address and telephone number of the OSWER Docket are provided in the **SUPPLEMENTARY INFORMATION** section above. To access information on the Internet, go to the EPA Dockets Web site at *http://www.epa.gov/edocket/.* The index and the following supporting materials are available in the OSWER Docket and on the Internet:

''Background Document for Proposed CPG V and Draft RMAN V,'' U.S. EPA, Office of Solid Waste and Emergency Response, March 2003.

Copies of the following supporting materials are available for viewing at the OSWER Docket only:

''Recovered Materials Product Research for the Comprehensive Procurement Guideline V,'' Draft Report, December 2002.

Dated: November 25, 2003.

Michael O. Leavitt,

Administrator.

Recovered Materials Advisory Notice V

The following represents EPA's recommendations to procuring agencies for purchasing the items designated by EPA in the Comprehensive Procurement Guideline V (CPG V), in compliance with section 6002 of the Resource Conservation and Recovery Act (RCRA) and Executive Order 13101. These recommendations are interested to be used in conjunction with RMAN I (60 FR 21386, May 1, 1995), the Paper Products RMAN (61 FR 26985, May 29, 1996), the Paper Products RMAN II (63 FR 31214, June 8, 1998), RMAN II (62 FR 60975, November 13, 1997), RMAN III (65 FR 3082, January 19, 2000), and RMAN IV, once it is issued. Refer to the previous RMANs or the Code of Federal Regulations at 40 CFR part 247 for definitions, general recommendations for affirmative procurement programs, and recommendations for previously designated items. EPA has a Web site for the CPG program that provides information on all designated items and RMAN recommendations, including a consolidated RMAN. This information can be found at *www.epa.gov/epg.*

Contents

I. General Recommendations

General recommendations for definitions, specifications, and affirmative procurement programs can

be found in the May 1, 1995 RMAN (60 FR 21386).

II. Specific Recommendations for Procurement of Designated Items

Recommendations for purchasing previously-designated items can be found in RMAN I (May 1, 1995); RMAN II (November 13, 1997); RMAN III (January 19, 2000); and the Paper Products RMAN's (May 29, 1996, and June 8, 1998).

Part F—Landscaping Products

Section F–2. Compost Made From Recovered Organic Materials (Revised)

Note: EPA previously designated yard trimmings compost in CPG I and food waste compost in CPG III. The proposed CPG V discusses the use of compost made from manure or biosolids. The final CPG V would consolidate all previous and proposed compost designations under one item called ''compost made from recovered organic materials.'' These materials could include yard trimmings, food waste, manure, biosolids, or other recovered organic materials that can be composted. Following are EPA's revised recommendations for purchasing compost. When EPA issues final recommendations for purchasing composts made from recovered organic materials, procuring agencies should substitute them for the recommendations found in section F–2 of RMAN III.

Preference Program: EPA recommends that procuring agencies purchase or use mature compost made from recovered organic materials in such applications as landscaping, seeding of grass or other plants on roadsides and embankments, as nutritious mulch under trees and shrubs, and in erosion control and soil reclamation. Mature compost is defined as a thermophilic converted product with high humus content, which can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off.

EPA further recommends that those procuring agencies that have an adequate volume of organic materials, as well as sufficient space for composting, should implement a composting system to produce compost from these materials to meet their landscaping and other needs.

Specifications: EPA recommends that procuring agencies refer to the U.S. Composting Council's Test Methods for the Examination of Composting and Compost (TMECC) at *www.compostingcouncil.org*, which are standardized methods for the composting industry to test and evaluate compost and verify the physical, chemical, and biological characteristics of composting source materials and compost products. The TMECC also includes material testing guidelines to ensure product safety and market claims. Procuring agencies should also check for individual state regulations on the use of compost.

The U.S. Department of Transportation's ''Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects 1996'' specifies compost as one of the materials suitable for use in roadside revegetation projects associated with road construction.

EPA issued regulations in 1993 that limit the pollutants and pathogens in biosolids, entitled ''The Standards for the Use or Disposal of Sewage Sludge,'' otherwise known as ''the Part 503 Biosolids Rule'' (40 CFR part 503). If biosolids are included as part of the compost, the processing and product are subject to the Part 503 Biosolids Rule Class A specifications for the highest level of pathogen and vector control (as described in section 2.3.1 of part 503) and specific metals limits, the compost product can be widely used, like any other fertilizer or soil-conditioning product.

Finally, EPA recommends that procuring agencies ensure that there is no language in their specifications relating to landscaping, soil amendments, erosion control, or soil reclamation that would preclude or discourage the use of compost made from recovered organic materials.

Section F–6. Organic Fertilizers

Note: Although fertilizer has some qualities similar to compost, for the purposes of the CPG, compost is considered a separate designation.

Preference Program: EPA recommends that procuring agencies purchase or use fertilizers made from recovered organic materials in such applications as agriculture and crop production, landscaping, horticulture, parks and other recreational facilities, on school campuses, and for golf course and turf maintenance.

Specifications: EPA recommends procuring agencies refer to the Organic Materials Review Institute (OMRI) at *www.omri.org*, which has developed guidelines and lists of materials allowed and prohibited for use in the production, processing, and handling of organically grown products. Procuring agencies should also check for individual state regulations on the use of organic fertilizers.

In addition, as mentioned above, biosolids can be used in the production of organic fertilizer and must meet the requirements specified in EPA's Part 503 Biosolids Rule before they can be beneficially used. The 40 CFR part 503 Biosolids Rule land application requirements ensure that any biosolids that are land applied contain pathogens and metals that are below specified levels to protect the health of humans, animals, and plants.

In proposing to designate fertilizers made from recovered organic materials in the CPG, EPA is not placing any limitations on the organic materials, but rather is relying on federal, state, and local regulations and guidance, as well as existing industry standards. EPA is requesting comment on whether it should place any limitations on the recovered organic materials contained in the fertilizers that the Agency is today proposing to designate in the CPG, and on what those limitations should be. EPA is also seeking comment and information on any other specifications which we should recommend that pertain to fertilizers made with recovered organic materials.

Finally, EPA recommends that procuring agencies ensure that there is no language in their specifications relating to landscaping or soil treatment that would preclude or discourage the use of fertilizers made from recovered organic materials.

[FR Doc. 03–30267 Filed 12–9–03; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 03–194; FCC 03–309]

Application by Qwest Communications International Inc. for Authorization To Provide In-Region, InterLATA Services in Arizona

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of Qwest Communications International Inc. (Qwest) for authorization to provide in-region, interLATA services in Arizona. The Commission grants Qwest's application based on its conclusion that Qwest has satisfied all of the statutory requirements for entry and fully opened its local exchange markets to competition.

DATES: Effective December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Cathy Carpino, Attorney-Advisor,

Wireline Competition Bureau, at (202) 418–1580 or via the Internet at *cathy.carpino@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 03–194, FCC 03–309, adopted December 3, 2003, and released December 3, 2003. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications*.

Synopsis of the Order

1. *History of the Application*. On September 4, 2003, Qwest filed an application with the Commission, pursuant to section 271 of the Telecommunications Act of 1996, to provide in-region, interLATA service in the state of Arizona.

2. *The State Commission's Evaluation*. The Arizona Corporation Commission (Arizona Commission), following an extensive review process, determined that Qwest satisfied all 14 of the checklist items contained in section 271. Consequently, the Arizona Commission recommended that the Commission grant Qwest's application to provide in-region, interLATA service in Arizona.

3. *The Department of Justice's Evaluation*. The Department of Justice filed its evaluation on October 9, 2003, recommending approval of the application. The Department of Justice concludes that opportunities are available to competing facilities-based carriers serving business and residential customers.

Primary Issues in Dispute

4. *Checklist Item 2—Unbundled Network Elements*. Section 251(c)(3) requires incumbent LECs to provide ''nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.'' Based on the evidence in the record, we conclude that Qwest has satisfied the requirements of checklist item 2.

5. *Operations Support Systems (OSS)*. The Commission concludes that Qwest meets its obligation to provide access to its OSS—the systems, databases, and personnel necessary to support the network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Qwest regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that Qwest provides access to each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance), in order for competitive LECs to compete and in accordance with the Act. In particular, the Commission thus finds that the allegations raised about Qwest's change management process (CMP) in this record do not warrant a finding of checklist noncompliance. The Commission finds that Qwest's CMP and Qwest's pattern of compliance with the CMP satisfies checklist item 2.

6. *Checklist Item 4—Unbundled Local Loops*. The Commission concludes that Qwest provides unbundled local loops in accordance with the requirements of section 271 and our rules. The Commission's conclusion is based on its review of Qwest's performance for all loop types—which include voice grade loops, digital subscriber line-capable loops, and high capacity loops—as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting. As of May 31, 2003, competitors have acquired from Qwest and placed into use approximately 37,719 stand-alone unbundled loops in Arizona. With respect to concerns regarding recent changes in Qwest's policy on construction of new facilities related to provisioning of high-capacity unbundled loops, the Commission declines to find this allegation warrants a finding of checklist noncompliance. Absent additional evidence, the Commission is not convinced that Qwest's policy has denied competitive LECs a meaningful opportunity to compete to date.

Other Checklist Items

7. *Checklist Item 2—OSS*. The Commission finds that Qwest demonstrates it provides nondiscriminatory access to its pre-ordering, ordering, provisioning, maintenance and repair, and billing functions. Regarding specific areas for which commenters or the Commission identifies issues with Qwest's OSS performance, the Commission finds that these problems do not demonstrate overall discriminatory treatment or are not sufficient to warrant a finding of checklist noncompliance.

8. *Pricing of Unbundled Network Elements*. The Commission finds, as did the Arizona Commission, that Qwest's UNE rates in Arizona are just, reasonable, and nondiscriminatory as required by section 252(d)(1). Thus, Qwest's UNE rates in Arizona satisfy checklist item 2.

9. *Checklist Items 1, 3, 5–14*. An applicant under section 271 must demonstrate that it complies with item 1 (interconnection), item 3 (poles, ducts, and conduits), item 5 (unbundled transport) item 6 (unbundled local switching), item 7 (E911/operator services/directory assistance), item 8 (white pages), item 9 (numbering administration), item 10 (data bases and signaling), item 11 (number portability), item 12 (local dialing parity), item 13 (reciprocal compensation), and item 14 (resale). Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, the Commission concludes that Qwest demonstrates that it is in compliance with checklist items 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 in Arizona.

Other Statutory Requirements

10. *Compliance with Section 271(c)(1)(A)*. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or section 271(c)(1)(B) (Track B). The Commission concludes that Qwest satisfies the requirements of Track A in Arizona. This decision is based on the number of interconnection agreements it has implemented with competing carriers in the state of Arizona.

11. *Section 272 Compliance*. Qwest provides evidence that for two of its affiliates—Qwest LD Corp. and Qwest Communications Corporation—it maintains the same structural separation and nondiscrimination safeguards in Arizona as it does in the other 13 states where Qwest has already received section 271 authority. Based on the record before us, the Commission concludes that Qwest has demonstrated that it will comply with the requirements of section 272.

12. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From its extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, the Commission finds that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in Arizona are open to competition.

13. *Section 271(d)(6) Enforcement Authority.* The Commission concludes that, working with the Arizona Commission, we will closely monitor Qwest's post-approval compliance to ensure that Qwest continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively if there is evidence that market-opening conditions have not been sustained.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30541 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–361; WC Docket No. 03–45; WC Docket No. 03–211; DA 03–3777]

FCC Announces Agenda for the Voice Over IP Forum

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission announces a Forum to discuss Voice over Internet Protocol (VoIP). All FCC Commissioners will participate. The purpose of the Forum is to gather information concerning advancements, innovations, and regulatory issues related to VoIP services. Information concerning the Forum, including the agenda, copies of presentations, and bios of the speakers, will be available at the Forum Web page *http://www.fcc.gov/voip/*.

DATES: The Forum will take place Monday, December 1, 2003, 10:30 a.m. to 3 p.m. The event is open to the public, and there is no fee for attendance. Pre-registration is not required.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Pepper, Office of Strategic Planning and Policy Analysis, (202) 418–2030, *voipforum@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission announces a Forum to discuss Voice over Internet Protocol (VoIP). All FCC Commissioners will participate. The purpose of the Forum is to gather information concerning advancements, innovations, and regulatory issues related to VoIP services. The agenda and further details are attached. Information concerning the Forum, including the agenda, copies of presentations, and bios of the speakers, will be available at the Forum Web page *http://www.fcc.gov/voip/*.

The VoIP Forum will be webcast live and also archived for later viewing. Access to and additional information concerning the webcast is available at *http://www.fcc.gov/realaudio/*. Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

The Forum will open with statements by the Chairman and the Commissioners. There will also be a background presentation by FCC staff regarding FCC Precedents regarding VoIP.

The first panel will address technical and market issues surrounding VoIP service. Panelists will be asked to describe the technology and capabilities of VoIP, and how VoIP can be used to offer end users lower-cost, innovative services with capabilities previously unavailable in voice communications. Panelists will address how the FCC might distinguish among the numerous services employing VoIP, and whether it could feasibly distinguish between VoIP and other IP-enabled applications facilitating communication (ranging from e-mail to instant messaging to videoconferencing to interactive online gaming). The panelists will include Kevin Werbach, Founder, Supernova Group, Charles H. Giancarlo, SVP and General Manager, Cisco Systems, Inc., Jeff Pulver, President and CEO, Pulver.com, John Hodulik, Managing Director, Communications Group, UBS, and John Billock, COO, Time Warner Cable.

The second panel will address public policy questions raised by VoIP. Panelists will be asked to address what, if any, regulatory obligations currently imposed upon traditional circuit-switched voice service providers should be placed upon VoIP providers and whether from either legal or technical perspectives such obligations are feasible. Panelists may focus on traditional utility regulatory issues such as non-discrimination and price regulation as well as social policies such as access by persons with disabilities, universal service, CALEA, and E911. The panelists will include Michael Gallagher, Acting Assistant Secretary, Department of Commerce, Commissioner Carl Wood, California PUC, Commissioner Charles Davidson, Florida PSC, James Crowe, CEO, Level3, Tom Evslin, CEO, ITXC, Jeffrey Citron, CEO, Vonage, and Dr. Gregg Vanderheiden, Rehabilitation Engineering Research Project on Telecommunications Access, University of Wisconsin.

The Forum will end with closing statements by Chairman and Commissioners.

Federal Communications Commission.

Kathleen Ham,

Deputy Chief, Office of Strategic Planning & Policy Analysis.

[FR Doc. 03–30543 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 26, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Bale South Central Family Limited Partnership, Horse Cave, Kentucky; Bale South Central Family Trust, Horse Cave, Kentucky; as general partner and Thomas M. Bale, Cave City, Kentucky; Lester D. Bale, Horse Cave, Kentucky; William O. Bale, LaFollette, Tennessee; Ellen L. Bale, Glasgow, Kentucky; and Ruth H. Bale, Bowling Green, Kentucky; to acquire control of South Central

Bancshares of Kentucky, Inc., Horse Cave, Kentucky, and thereby control First Deposit Bancshares, Inc., Tompkinsville, Kentucky, which controls South Central Savings Bank, FSB, Elizabethtown, Kentucky, and South Central Bank of Monroe County, Tompkinsville, Kentucky; United Central Bancshares, Inc., Bowling Green, Kentucky, which controls South Central Bank of Bowling Green, Inc., Bowling Green, Kentucky; First United Bancshares, Inc., Glasgow, Kentucky, which controls South Central Bank of Barren County, Inc., Glasgow, Kentucky; and South Central Bank of Daviess County, Inc., Ownesboro, Kentucky.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert M. Alexander, Calhan, Colorado; to acquire control of Financial Services of the Rockies, and thereby indirectly acquire First National Bank of Colorado Springs, Colorado Springs, Colorado.

Board of Governors of the Federal Reserve System, December 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00513 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. PBFC Holding Company, Bude, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Franklin County, Bude, Mississippi.

Board of Governors of the Federal Reserve System, December 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00499 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Prairieland Bancorp Employee Stock Ownership Plan and Trust, Bushnell, Illinois; to increase its ownership from 44.33 percent to 49.47 percent of Prairieland Bancorp, Inc., Bushnell, Illinois, and thereby indirectly acquire Farmers and Merchants State Bank, Bushnell, Illinois.

Board of Governors of the Federal Reserve System, December 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00514 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be

received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. J.P. Morgan Chase & Co., New York, New York; to engage *de novo* through its subsidiary, Chase FSB, Newark, Delaware, in operating a federal savings bank, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00498 Filed 12–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 11:30 a.m. (EDT); correction, December 15, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice; correction.

SUMMARY: The Federal Retirement Thrift Investment Board published a notice in the **Federal Register** on Friday, December 5, 2003, concerning upcoming Board member meeting.

Correction:

In the **Federal Register** of Friday, December 5, 2003, Vol. 68, No. 234, page 68093, first column, change the time caption to read: 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 8, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–30713 Filed 12–8–03; 1:07 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0221]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Revision of currently approved collection;

Title of Information Collection: Family Planning Annual Report: Forms and Instructions and Supporting Regulations 42 CFR Part 50 and 59;

Form/OMB No.: OS–0990–0221;

Use: This annual reporting requirement is for family planning service delivery projects authorized and funded under the Population Research and Voluntary Family Planning Programs (Section 1001 Title X of the Public Health Service Act, 42 U.S.C. 300). The Family Planning Annual Report (FPAR) is the only source of annual, uniform reporting by all Title X family planning service grantees. Office of Population Affairs uses FPAR data to monitor compliance with statutory requirements, to comply with accountability and performance requirements of Government Performance and Results Act and HHS plans, and to guide program planning and evaluation.

Frequency: Annually;

Affected Public: State, local, or tribal government;

Annual Number of Respondents: 89;

Total Annual Responses: 89;

Average Burden Per Response: 30 hours;

Total Annual Hours: 2,937.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Naomi.Cook@hhs.gov.* or call the Reports Clearance Office on (202) 690–5522. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0221), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: December 1, 2003.

John P. Burke III,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 03–30551 Filed 12–9–03; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Studies To Determine the Prevalence of a History of Traumatic Brain Injury (TBI) in an Institutionalized Population

Announcement Type: New.

Funding Opportunity Number: 04062.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates:

Letter of Intent Deadline: January 9, 2004.

Application Deadline: February 18, 2003.

I. Funding Opportunity Description

Authority: This program is authorized under sections 391(a) and 301(a) of the Public Health Service Act (PHS Act) and 42 U.S.C. 241(a) and 280b(a) as amended.

Purpose: The purpose of the program is to fund a cooperative agreement to conduct pilot studies to investigate methods for determining the prevalence of a history of traumatic brain injury (TBI) in an institutionalized population. For purposes of this RFA, ''institutionalized'' refers to persons who are either incarcerated or residing in a nursing home. Research on only one of these populations should be proposed.

Anecdotal reports suggest that a very large proportion of the prison population may have experienced one or more TBIs, with many of them occurring prior to incarceration. The cognitive deficits that can result from traumatic brain injuries often are not visible, and behavioral and emotional problems associated with TBI may be

attributed to other causes. Thus, prisoners with TBI as well as prison officials may not be aware of the signs, symptoms, and long term problems resulting from TBI, and therefore may not seek or provide appropriate treatment or other interventions. Better methods for identifying incarcerated persons with a history of TBI and related problems could lead to improved management of TBI in this population.

An estimated 20 to 30 percent of persons hospitalized with moderate to severe TBI are discharged to nursing homes, including those for long-term care. Not all of the persons with TBI who are discharged to nursing homes are elderly, but little is known about the age distribution and other characteristics of this population. Of note, research on a small number of persons with TBI residing in long-term nursing facilities found that, with the proper rehabilitation, they recovered sufficient function to return home or live in a supported community living environment. Better information on the number and characteristics of persons with TBI living in nursing homes, including their functional levels, would inform the development of policies to ensure that they receive appropriate rehabilitation services that can help them return to the community.

This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC):

- Conduct a targeted program of research to reduce injury-related death and disability.

Research Objectives

For research to identify TBI among prisoners:

- To develop valid and reliable measure(s) for ascertaining the history of previous traumatic brain injuries (including those occurring prior to or during incarceration) within a subgroup of the incarcerated population (*e.g.*, adult women or men in prison, or youth in the juvenile justice system), or to validate an existing instrument for use with this population.
- To use these measure(s) to determine the prevalence of a history of TBI in an incarcerated population.

For research to identify persons with TBI in nursing homes:

- To determine the prevalence of persons admitted to nursing homes with a diagnosis of TBI, including those for long-term care, within a state, or alternatively a defined catchment area, for example, multiple census tracts, multiple counties, or a metropolitan area.
- To determine the functional status and other characteristics of a sample of persons with TBI in long-term care facilities.

Activities

Awardee activities for this program are as follows:

- With assistance from the CDC, prepare a detailed research protocol for Institutional Review Board (IRB) approval by all cooperating institutions participating in the study, including CDC. The protocol shall include but is not limited to the following: A detailed description of a reliable and valid existing instrument(s) for use with the proposed population, or the methods for developing such instrument(s); recruitment and enrollment methods including the informed consent process and consent forms; methods for data handling and storage including methods for ensuring participant confidentiality; data analysis methods; and plans for data dissemination. Specific issues and approaches to conducting research in the proposed institutional setting, including any prior experience, must be described.
- Develop a detailed operations manual documenting study methods.
- Train study personnel.
- Recruit study participants.
- Collect and enter the data.
- Provide case level data, without personal identifiers, to the CDC for use in collaborative analyses.
- Analyze and interpret the data.
- Report study findings, including those in peer-reviewed publications.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide technical assistance where applicable and as necessary for effective study planning and management.
- Assist in the development of a research protocol for Institutional (IRB) review by all cooperating institutions participating in the research. CDC will provide guidance about protocol format and content as well as scientific and human subjects considerations.
- The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.
- CDC staff will collaborate in the analysis of data and reporting of findings by participating as co-authors in the preparation of peer-reviewed publications.
- CDC staff will convene routine conference calls with the recipient and conduct a site visit annually or as needed to review progress.

II. Award Information

Type of Award: Cooperative agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $ 300,000.

Approximate Number of Awards: Two.

Approximate Average Award: $ 150,000.

Floor of Award Range: $ 100,000.

Ceiling of Award Range: $200,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: One year.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

III. Eligibility Information

1. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- For profit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their *bona fide* agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A *bona fide* agent is an agency/organization identified by the State as

eligible to submit an application under the State eligibility in lieu of a state application. If you are applying as a *bona fide* agent of a State or local government, you must provide a letter from the State or local government as documentation of your status. Place this documentation behind the first page of your application form.

2. Cost Sharing or Matching

Matching funds are not required for this program.

3. Other Eligibility Requirements

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Is there an appropriate degree of commitment and cooperation from other participating parties as evidenced by letters of support detailing the nature and extent of involvement? Letter(s) of support from appropriate officials from departments of corrections, nursing homes, or other agencies responsible for approving the use of existing data sets containing information on these populations, indicating approval for the research, must be included with the application.
- Does the applicant describe research methods that are feasible and appropriate for the corrections setting?
- Is there evidence of the experience and capacity for all key staff members including Curriculum Vitae (CV) and position descriptions?
- Does the research team include expert(s) with experience conducting TBI research relevant to the proposed study?
- Are the investigators requesting a funding amount that is greater than the upper ceiling of the award range?
- Principal investigators (PI's) are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per PI will be funded under this announcement.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

4. Individuals Eligible To Become Principal Investigators

Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

IV. Application and Submission Information

1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

2. Content and Form of Application Submission

Letter of Intent (LOI)

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be written in the following format:

- Maximum number of pages: Two;
- Font size: 12-point unreduced;
- Paper size: 8.5 by 11 inches;
- Page margin size: One inch;
- Single spaced;
- Printed only on one side of page;
- Written in English, no jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research;
- Name, address, e-mail, and telephone number of the Principal Investigator;
- Names of other key personnel;
- Participating institutions;
- Number and title of this Program Announcement (PA).

Application

Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact GrantsInfo, telephone (301) 435–0714, email: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered in item 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, *see* the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

3. Submission Dates and Times

LOI Deadline Date: January 9, 2004.

Application Deadline Date: February 18, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before

calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows: none.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Robin Forbes, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341. Telephone: 770–488–4037; fax: 770–488–1662; email: *cipert@cdc.gov.*

Application Submission Address: Submit the original and five copies of your application by mail or express delivery service to: Technical Information Management—PA# 04062, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application.

The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed experiment take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

- Does the applicant describe either (a) existing instruments appropriate for use with the proposed population or (b) scientifically sound plans for developing such instrument(s)?
- Does the applicant describe research methods appropriate for a study in the proposed institutional setting?
- Are there adequate plans for data collection and data management including security of data and assurance of participant confidentiality?
- Is there a statistical analysis plan appropriate for the study design?
- Does the applicant provide a detailed and appropriate timeline for the study?

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of woman, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Inclusion of Children as Participants in Research Involving Human Subjects

The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the inclusion of children as participants in research involving human subjects that is available at: *http://grants.nih.gov/grants/funding/children/children.htm.*

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. This announcement does not use the modular budget format.

2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness for other eligibility requirements by the National Center for Injury Prevention and Control. Incomplete applications and applications that are non-responsive will not advance through the review

process. You will be notified that you did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group convened by the NCIPC in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level review by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC).

Applications that are complete and responsive to the PA will be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Initial Review Group (IRG) convened by NCIPC, to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRG. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator or program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

1. The primary review will be a peer review conducted by the IRG. All applications will be reviewed for scientific merit in accordance with the review criteria listed above. Applications will be assigned a priority score based on the National Institutes of Health (NIH) scoring system of 100–500 points.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of NCIPC's Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review, and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.''

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

VI. Award Administration Information

1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

2. Administrative and National Policy Requirements

45 CFR part 74 and 92.

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

The following additional requirements apply to this project:

- AR–1—Human Subjects Requirements
- AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–6—Patient Care
- AR–8—Public Health System Reporting Requirements
- AR–9—Paperwork Reduction Act Requirements
- AR–10—Smoke-Free Workplace Requirements
- AR–11—Healthy People 2010
- AR–12—Lobbying Restrictions
- AR–13—Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–14—Accounting System Requirements
- AR–15—Proof of Non-Profit Status
- AR–21—Small, Minority, and Women-Owned Business
- AR–22—Research Integrity
- AR–23—States and Faith-Based Organizations
- AR–24—Health Insurance Portability and Accountability Act Requirements
- AR–25—Release and Sharing of Data

Starting with the December 1, 2003, receipt date, all NCIPC funded investigators seeking more than $500,000 in total costs in a single year are expected to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing/release, including the timeliness and name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing/release may also be appropriate in other sections of the application (*e.g.* background and significance, human subjects requirements, *etc.*) The content of the data sharing/release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing/release plan will not count towards the application page limit and will not factor into the determination of scientific merit or priority scores. Investigators should seek guidance from their institutions on issues related to institutional policies, local IRB rules, as well as local, State and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or visiting the NCIPC Internet Web site: at *http://www.cdc.gov/ncipc/osp/sharing_policy.htm*.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

3. Reporting

You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the ''Agency Contacts'' section of the announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, PA#04062, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For scientific/research program technical assistance, contact: William K. Ramsey, Project Officer, Division of Injury and Disability Outcomes and Programs, Centers for Disease Control and Prevention, 4770 Buford Highway, Mail Stop F–41, Chamblee, GA 30341. Telephone: 770–488–1226; e-mail: *BRamsey1@cdc.gov*.

For questions about peer review, contact: Gwendolyn Cattledge, Scientific Review Administrator, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway, NE., MailStop K–02, Atlanta, GA 30341. Telephone: 770–488–1430; e-mail: *gxc8@cdc.gov*.

For budget assistance, contact: Angie Nation, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2719; e-mail: *aen4@cdc.gov*.

Dated: December 4, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–30583 Filed 12–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Radiation and Worker Health Advisory Board Meeting; Correction

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

AGENCY: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH), HHS.

ACTION: Correction.

Correction: In the **Federal Register** of November 17, 2003, in DOCID: fr17no03–102, Volume 68, Number 221, Page 64902, concerning the purpose for closing a portion of the meeting of the Advisory Board on Radiation and Worker Health, the notice cited an incorrect reason for the meeting closure. Correct ''Matters to be Discussed'' to read:

The closed portion of the meeting on the afternoon of December 10th will involve a review and discussion of the Independent Government Cost Estimate (IGCE) for task order contracts and proposals of work for the performance of these task order contracts, which could lead to a revision of the IGCE. These contracts will serve to provide technical support consultation to assist the ABRWH in fulfilling its statutory duty to advise the Secretary of Health and Human Services on the scientific validity and quality of dose estimation and reconstruction efforts under the Energy Employees Occupational Illness Compensation Program Act. These discussions will include reviews of the technical proposals to determine adequacy of the proposed approach, and associated contract cost estimates.

This portion of the meeting will be closed to the public in accordance with provisions set forth regarding subject matter considered confidential under the terms of 5 U.S.C. 552b(c)(9)(B), 48 CFR 5.401(b)(1) and (4), and 48 CFR 7.304(d)., and the Determination of the Director of the Management and Services Office, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–6825, fax (513) 533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 5, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–30681 Filed 12–9–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0428]

Guidance for Industry: An Acceptable Circular of Information for the Use of Human Blood and Blood Components; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: An Acceptable Circular of Information for the Use of Human Blood and Blood Components'' dated December 2003. The guidance document recognizes the ''Circular of Information for the Use of Human Blood and Blood Components'' (the circular) dated July 2002 as acceptable for use by manufacturers of blood and blood components intended for transfusion. The circular will assist manufacturers in complying with the labeling requirements under FDA regulations. The guidance announced in this notice finalizes the draft guidance of the same title dated October 2002.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40),

Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: An Acceptable Circular of Information for the Use of Human Blood and Blood Components'' dated December 2003. The guidance recognizes that the circular dated July 2002 meets the labeling requirements in § 606.122 (21 CFR 606.122) and is acceptable for use by manufacturers of blood and blood components intended for transfusion that are subject to U.S. statutes and regulations. The circular was prepared jointly by the American Association of Blood Banks, America's Blood Centers, and the American National Red Cross. A copy of the circular is included as an attachment in the guidance document. The guidance announced in this notice finalizes the draft guidance of the same title, dated October 2002 (67 FR 64402, October 18, 2002).

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance and the circular at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*. The circular may also be obtained at *http://www.aabb.org*. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Dated: December 1, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30644 Filed 12–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM

[For Press Release From 11/01/2003—11/30/2003]

Subject name	Address	Effective date
PROGRAM-RELATED CONVICTIONS:		
ALLEN, KENNETH	JUNCTION, UT	12/18/2003
ALMO, JENNIFER	LEXINGTON, MS	12/18/2003
ALVARENGA, MARIA	LOS ANGELES, CA	12/18/2003
ARRIOLA, ALICIA	BELL GARDENS, CA	12/18/2003
ATTIKIAN, ARMEN	VAN NUYS, CA	12/18/2003
BARMORE, BURTON	GOLDSBORO, NC	12/18/2003
BELL, DIANE	HOUSTON, TX	12/18/2003
BIRMINGHAM REHABILITATION & PHYSICAL THERAPY CTR, INC	BLOOMFIELD, MI	12/18/2003
BRADLEE PHARMACY, INC	LAS VEGAS, NV	12/18/2003
BURDEN, MARGARET	VIDALIA, LA	12/18/2003
CORE, NICKLAUS	CHANDLER, AZ	12/18/2003
EMMONS, ROSLYN	WASHINGTON, VT	12/18/2003
GAZO, MARIA	NORWALK, CA	12/18/2003
GOFF, ELBERT	LOUISVILLE, KY	12/18/2003
GRAHAM, CARLIN	TALLADEGA, AL	12/18/2003
HEWETT, NANCY	EIGHT MILE, AL	12/18/2003
ISMAIL, MOHAMED	PARSIPPANY, NJ	12/18/2003

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM—Continued

[For Press Release From 11/01/2003—11/30/2003]

Subject name	Address	Effective date
JONES, GARY	ASHLAND, KY	12/18/2003
LEE, CHANG	LOS ANGELES, CA	12/18/2003
LEE, JONATHON	LOS ANGELES, CA	12/18/2003
LOPEZ, JANICE	YORKTOWN HGTS, NY	12/18/2003
LUCERO, RUBI	SANTE FE, NM	12/18/2003
LUIS, RAFAEL	SALT LAKE CITY, UT	12/18/2003
LUND, KATHLEEN	TEMPE, AZ	12/18/2003
MARTINEZ, TERESA	ORLANDO, FL	12/18/2003
MAYO, HEATHER	WEST VALLEY CITY, UT	12/18/2003
MCCOLLUM, WILLIAM	BIRMINGHAM, AL	12/18/2003
MILLS, BRIAN	BEAUMONT, TX	12/18/2003
MOORE, ROSIE	PHOENIX, AZ	12/18/2003
MURADIAN, HRIPSIME	GLENDALE, CA	12/18/2003
NEVIS, RICHARD	MESA, AZ	12/18/2003
PARMA, JAMES	SCHULENBURG, TX	12/18/2003
PONDERS, LASHON	HOLLYWOOD, FL	12/18/2003
RICHARDSON, KEVIN	ARCADIA, FL	12/18/2003
SAITO, IMELDA	WATERLOO, NY	12/18/2003
SCHALLER, DEBRA	MODESTO, CA	12/18/2003
SMITH, LESTER	LITTLE ROCK, AR	12/18/2003
STARKEY, DARLENE	ALDERSON, WV	12/18/2003
STRICKLAND, CONSTANTINA	GLENDALE, AZ	12/18/2003
STRICKLAND, PAMELA	EAGLE CREEK, OR	12/18/2003
THACHER, FREDERICK	DULUTH, MN	12/18/2003
TOLIBLE, CAROLYN	BRANDON, MS	12/18/2003
WALLACE, CATHERINE	COVENTRY, RI	12/18/2003
WALLER, LAFANTA	BELZONI, MS	12/18/2003
WREN, ALAN	ALBUQUERQUE, NM	12/18/2003
FELONY CONVICTION FOR HEALTH CARE FRAUD:		
ADAS, MOHAMMAD	MAUMEE, OH	12/18/2003
FORESTER, BRUCE	BRONXVILLE, NY	12/18/2003
GATES, LAURIE	EAGLE BRIDGE, NY	12/18/2003
HOUSHYARIMANESH, HAMID	FULLERTON, CA	12/18/2003
LACY, MICHAEL	WESTERVILLE, OH	12/18/2003
LINDER, MICHAEL	HUTCHINSON, KS	12/18/2003
OSWALD, THOMAS	WADSWORTH, OH	12/18/2003
POWELL, LEO	MONROVIA, CA	12/18/2003
RINGLE, WILLIAM	WESTERVILLE, OH	12/18/2003
RUSSELL, BONNIE	BRONX, NY	12/18/2003
TOUSIGNANT, ANASTACIA	MORRISTOWN, MN	12/18/2003
FELONY CONTROL SUBSTANCE CONVICTION:		
ANDERSON, CHERI	KINGMAN, AZ	12/18/2003
AUSTIN, GERALD	SAN JOSE, CA	12/18/2003
BROOKS, SARITA	CALDWELL, AR	12/18/2003
CHAMBERS, DONNA	GREENEVILLE, TN	12/18/2003
CUCHNA, DENISE	GLYNDON, MN	12/18/2003
DAVIES, BRIAN	AKRON, OH	12/18/2003
GIEBLER, COLLEEN	WARMINSTER, PA	12/18/2003
GOIN, JYL	VANDALIA, MO	12/18/2003
LUNDIN, DEBORAH	ANKENY, IA	12/18/2003
LYNCH, CATHEY	SHELBYVILLE, TN	12/18/2003
MORGAN, LAURA	VAL RICO, FL	12/18/2003
STEWART, LAURA	COLORADO SPRINGS, CO	12/18/2003
WELLS, TINA	PARIS, KY	12/18/2003
PATIENT ABUSE/NEGLECT CONVICTIONS:		
BABCOCK, WILLIAM	COALINGA, CA	12/18/2003
CRENSHAW, RHEANNON	FORT WALTON BEACH, FL	12/18/2003
CULVER, BETTY	COLCORD, OK	12/18/2003
FAISON, PATRICIA	FAR ROCKAWAY, NY	12/18/2003
FEDERSPIEL, STEPHEN	LONG BEACH, CA	12/18/2003
FELLERS, TYRONE	FORREST CITY, AR	12/18/2003
HOLMES, ERNEST	WETUMPKA, AL	12/18/2003
JACOBS, JUANITA	COLORADO SPRINGS, CO	12/18/2003
LIVINGSTON, MARK	ROY, UT	12/18/2003
MARCOTTE, CHERIE	SPRINGFIELD, VT	12/18/2003
McCARTER, VALERIE	BUFFALO, NY	12/18/2003
PELKEY, PAMELA	WILLSBORO, NY	12/18/2003
SAWYER, DAVID	MOBERLY, MO	12/18/2003
WARD, PAUL	MOORE, OK	12/18/2003

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM—Continued

[For Press Release From 11/01/2003—11/30/2003]

Subject name	Address	Effective date
CONVICTION FOR HEALTH CARE FRAUD:		
RAMSDEN, JOHN	POUGHKEEPSIE, NY	12/18/2003
LICENSE REVOCATION/SUSPENSION/SURRENDER:		
ALEXANDER, BRENDA	TOPEKA, KS	12/18/2003
ALLNUTT-ETLER, MARSHA	OWENTON, KY	12/18/2003
ARTHUR, EVA	UNION, MS	12/18/2003
BAILEY, JANET	ST PETERSBURG, FL	12/18/2003
BAKARIC, ABBIE	TOOELE, UT	12/18/2003
BARBATO, STEVEN	DURHAM, NC	12/18/2003
BOBO, PATTY	CLAREMORE, OK	12/18/2003
BOWLING, ROBIN	CHANDLER, AZ	12/18/2003
BOYD, KARLA	CORTE MADERA, CA	12/18/2003
BRAINE, JAMES	EDMOND, OK	12/18/2003
BRANNON, RYAN	PHOENIX, AZ	12/18/2003
BRENDE, MARTI	CUERO, TX	12/18/2003
BRESNICK, SIMON	EGGERTSVILLE, NY	12/18/2003
BROACH, STACY	PINE BLUFF, AR	12/18/2003
BROWN, DEMETRIA	PHOENIX, AZ	12/18/2003
BURDETT, STEVEN	GLOBE, AZ	12/18/2003
BURGESS, CAROLINE	MESA, AZ	12/18/2003
CABANA, JUDY	SEWARD, AK	12/18/2003
CARAVAGELI, ANTHENE	COSTA MESA, CA	12/18/2003
CARNES, JAMES	CHARLOTTE, NC	12/18/2003
CARUTHERS, JEFFERY	LA QUINTA, CA	12/18/2003
CASEY, JOAN	FLAGSTAFF, AZ	12/18/2003
CHALAL, RICHARD	RUSSELLVILLE, AL	12/18/2003
CLARK, BEVERLY	AMARILLO, TX	12/18/2003
CLARK, DAVID	CARMEL, CA	12/18/2003
CLARK, JACOB	PORT ARANSAS, TX	12/18/2003
CLARK, LISA	EASTABOGA, AL	12/18/2003
CLAYPOOL, PATRICIA	AUSTIN, TX	12/18/2003
COE, LAILA	PHOENIX, AZ	12/18/2003
CONARD, MICHELE	TRENTON, NJ	12/18/2003
COOPER, RALPH	JOPLIN, MO	12/18/2003
CURRY, GEORGE	MARISSA, IL	12/18/2003
CUTCLIFFE, SHIRLEY	NIPOMO, CA	12/18/2003
CZARNOTA, TRACI	CARTERET, NJ	12/18/2003
DANKA, PAMELA	NAUGATUCK, CT	12/18/2003
DARWIN, KAREN	HEREFORD, AZ	12/18/2003
DENTON, TAWANNA	STANFORD, KY	12/18/2003
DESAI, PANKAJ	NEW HARTFORD, NY	12/18/2003
DOOYEN, JUANITA	PHOENIX, AZ	12/18/2003
DOWNEY, AMY	ONEONTA, NY	12/18/2003
DRISKILL, MARK	GRAND JUNCTION, CO	12/18/2003
DRUMM, DEBORAH	SCHUYLERVILLE, NY	12/18/2003
EMHE, STEPHEN	MEDIA, PA	12/18/2003
EPHAULT, PATRICIA	SCRANTON, PA	12/18/2003
EVANS, MARK	LA QUINTA, CA	12/18/2003
FEIGEL, LISA	PITTSBURGH, PA	12/18/2003
FONTAINE, DIANNE	WARWICK, RI	12/18/2003
FORRESTER, MARY	BOWLING GREEN, KY	12/18/2003
FRIDLEY, MICHELLE	PASCO, WA	12/18/2003
GABRIEL, STACEY	CLOVERDALE, CA	12/18/2003
GALLAHAIR, NINA	MUNFORD, AL	12/18/2003
GARCIA, CHARLOTTE	ESCONDIDO, CA	12/18/2003
GATES, PARYLUE	RIVIERA BEACH, FL	12/18/2003
GEDRIMAS, ANDREW	CHICAGO, IL	12/18/2003
GEVEDON, ROBERT	LEXINGTON, KY	12/18/2003
GIBBS, KATHY	RACELAND, KY	12/18/2003
GILSON, BRYAN	GRIFFIN, GA	12/18/2003
GONZALES, ANGELICA	PHOENIX, AZ	12/18/2003
GONZALES, SANDRA	PHOENIX, AZ	12/18/2003
GROSSMAN, KRISTY-JO	LACEY, WA	12/18/2003
GUIDOTTI, JANICE	PHILADELPHIA, PA	12/18/2003
GUILIANO, GINA	WOODCLIFF LAKES, NJ	12/18/2003
GWON, SAMUEL	LOS ANGELES, CA	12/18/2003
HADLEY, RUSSELL	LEESBURG, GA	12/18/2003
HARDING, LISA	POWNAL, VT	12/18/2003
HENRY-CAMPER, JOYCE	CLEARWATER, FL	12/18/2003

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM—Continued

[For Press Release From 11/01/2003—11/30/2003]

Subject name	Address	Effective date
HERINGTON, JULIE	FLORENCE, AZ	12/18/2003
HILL, PAUL	MONTE RIO, CA	12/18/2003
HINKLE, SHELLEY	BIRMINGHAM, AL	12/18/2003
HOLBROOK, GEORGE	TUCKER, GA	12/18/2003
HOLLIDAY, DAVID	MERIDIAN, MS	12/18/2003
HOLLIER, SUSAN	BOSSIER CITY, LA	12/18/2003
HOLSINGER, LORI	FLATWOODS, KY	12/18/2003
HOLT, VALERIE	PHOENIX, AZ	12/18/2003
HOUGLIN, TERRI	LOUISVILLE, KY	12/18/2003
HUCKABY, ANTONETTE	PHOENIX, AZ	12/18/2003
HUDSON, RUBYJEAN	MARYSVILLE, WA	12/18/2003
HUNTER, DIANE	KINGFISHER, OK	12/18/2003
JAMES, SCOTT	MAPLE VALLEY, WA	12/18/2003
JENKINS, JAN	MARTINEZ, GA	12/18/2003
JORDAN, RICHARD	CHINO HILLS, CA	12/18/2003
JUNCO, VICTOR	MIAMI BEACH, FL	12/18/2003
KHAN, RUBAB	LAWRENCEVILLE, GA	12/18/2003
KIBALLO, MARIAN	WARETOWN, NJ	12/18/2003
KIRIKO, PATRICIA	CANOGA PARK, CA	12/18/2003
KOGAN, VADIM	PRINCETON JUNCTION, NJ	12/18/2003
KORMAN, CAROL	BOCA RATON, FL	12/18/2003
KRUGLIKOV, STANISLAV	DULUTH, MN	12/18/2003
LANDRUM, EUGENE	CHICAGO, IL	12/18/2003
LAVELLE, BARBARA	RIDGEFIELD, NJ	12/18/2003
LEISER, ROBERT	DECATUR, IL	12/18/2003
LILLY, APRIL	MOUNT VERNON, IL	12/18/2003
LINDQUIST-BOBER, LORRAINE	ROLLING MEADOWS, IL	12/18/2003
LOCKLEAR, SHARON	PEMBROKE, NC	12/18/2003
LOCKOSKI, TAMMY	HOUSTON, PA	12/18/2003
LONG, JOHN	SANTA ROSA, CA	12/18/2003
LOPEZ, CAROLE	FRESNO, CA	12/18/2003
LUBIN, BARRY	ATLANTA, GA	12/18/2003
MARANGI, ROSEMARIE	COARSEGOLD, CA	12/18/2003
MARTIN, HEATHER	WAUKON, IA	12/18/2003
MCBRIDE, RITA	NEW MARKET, AL	12/18/2003
MCCALLUM, AMY	HILLSBOROUGH, NC	12/18/2003
MCFALL, TARA	HARROGATE, TN	12/18/2003
MCLAREN, JACQUELYN	BATON ROUGE, LA	12/18/2003
MCWILLIAMS, MICHELLE	PETERSBURG, IL	12/18/2003
MINOR, JULIE	ADAMSVILLE, AL	12/18/2003
MOEN, EDNA	SPOKANE, WA	12/18/2003
MORGAN, MELODY	MOULTON, AL	12/18/2003
MORPHEW, LISA	PHOENIX, AZ	12/18/2003
MULLER, MARIANNE	FORT COLLINS, CO	12/18/2003
MYERS NEWTON, TONYA	WOODWARD, OK	12/18/2003
NICHOLSON, GINGER	RINGWOOD, OK	12/18/2003
NOTTINGHAM, MARY	LAWTON, OK	12/18/2003
OHORO, CHERYL	MESA, AZ	12/18/2003
OUELLETT, KEVIN	NEW BRITAIN, CT	12/18/2003
PAULI, LLOYD	COLORADO SPRINGS, CO	12/18/2003
PEISTER, JODI	SUFFERN, NY	12/18/2003
PEZOA, LOIS	AURORA, CO	12/18/2003
PLAZA, JOSE	CORAL GABLES, FL	12/18/2003
PO, TEOFILO	WHITTIER, CA	12/18/2003
QUINTANA, OSCAR	HOUSTON, TX	12/18/2003
RANDALL, DOUGLAS	ERIE, PA	12/18/2003
REED, CARISA	SAN DIEGO, CA	12/18/2003
REED, MARIA	MESA, AZ	12/18/2003
ROBBINS, EDWARD	NEW TAZEWELL, TN	12/18/2003
ROMERO-ROMERO, H	SAN DIEGO, CA	12/18/2003
ROSE, VICKI	HAMBURG, PA	12/18/2003
RUIZESPARZA, NANCY	HUNTINGTON PARK, CA	12/18/2003
SANDORE, RICHARD	ZION, IL	12/18/2003
SCHOETTMER, PAULA	EAGLETOWN, OK	12/18/2003
SEATON, KAREN	SACRAMENTO, CA	12/18/2003
SELF, CHERYL	SIERRA VISTA, AZ	12/18/2003
SEVIGNY, WILLIAM	SANFORD, ME	12/18/2003
SHARP, MARY	PHOENIX, AZ	12/18/2003
SHIRLEY, CHERYL	KNOXVILLE, TN	12/18/2003

OFFICE OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL—DHHS, CASE INVESTIGATION MANAGEMENT SYSTEM—Continued

[For Press Release From 11/01/2003—11/30/2003]

Subject name	Address	Effective date
SKIBA, TERRY	EWA BEACH, HI	12/18/2003
SLUSHER, RODNEY	SPARTANBURG, SC	12/18/2003
SMITH, TRISH	CROFTON, KY	12/18/2003
SPRAGIS, JENNIFER	MARINGOUIN, LA	12/18/2003
STAFFORD, RALPH	PHOENIX, AZ	12/18/2003
STEINER, BARBARA	UNCASVILLE, CT	12/18/2003
STELLER, ROBERT	LOS ANGELES, CA	12/18/2003
SUDELL, LORI	GREENWICH, CT	12/18/2003
TEARPAK, SUZI	PUEBLO, CO	12/18/2003
TERRY, HERBERT	WATERBURY, CT	12/18/2003
TESCHNER, JANIE	GREENSBORO, AL	12/18/2003
THOMAS, KELLY	KAYSVILLE, UT	12/18/2003
THOMAS, MARY	MORRISVILLE, VT	12/18/2003
TINDLE, GARY	OKLAHOMA CITY, OK	12/18/2003
TRASLAVINA, CECILIA	GLENDALE, AZ	12/18/2003
TRUDO, MATHEW	FRIENDSWOOD, TX	12/18/2003
TSAROS, LORAINE	SANTA MARIA, CA	12/18/2003
TUCKER, CHERYL	FLAGSTAFF, AZ	12/18/2003
VAHEY, RENEE	O'FALLON, MO	12/18/2003
VANDERGRIFT, PATRICK	RAGLAND, AL	12/18/2003
VAUGHN, DELANA	ABERDEEN, NC	12/18/2003
VOEGTLIN, MARY	WOODBRIDGE, VA	12/18/2003
WALLACE, LYNETTE	POLKTON, NC	12/18/2003
WALTER, RICHARD	YAKIMA, WA	12/18/2003
WARGO, JOHN	GLASSPORT, PA	12/18/2003
WARWICK, SCOTT	WATERTOWN, SD	12/18/2003
WEBER, MARGARET	NEWFOUNDLAND, NJ	12/18/2003
WESTON, PAMELA	MESA, AZ	12/18/2003
WIGGINS, JACKIE	TUCSON, AZ	12/18/2003
WILLIAMS, ANGELA	ARLEY, AL	12/18/2003
WILSON, KAREN	BELLFLOWER, CA	12/18/2003
WILSON, REGINALD	REDDING, CA	12/18/2003
WISNESKI, DAVID S	WINDSOR, CT	12/18/2003
WOLCHOK, SUSAN	NEW PORT RICHEY, FL	12/18/2003
WOO, HILDA	MONTEREY PARK, CA	12/18/2003
YERMOLENKO, STEPAN	SACRAMENTO, CA	12/18/2003
FEDERAL/STATE EXCLUSION/SUSPENSION:		
BANKS, KENNETH	CAMDEN, NJ	12/18/2003
OWNED/CONTROLLED BY CONVICTED ENTITIES:		
HEARTLAND ANESTHESIA, PC	WATERTOWN, SD	12/18/2003
HYLAND MEDICAL, P C	SALT LAKE CITY, UT	12/18/2003
LEONARD WALKER, MD, PA	VERO BEACH, FL	12/18/2003
NORTHRIDGE DENTAL	NORTHRIDGE, CA	12/18/2003
SUPPORTIVE HEALTH SERVICES CORP	MIAMI, FL	12/18/2003
TRUSTED CARE SERVICES, INC	MEQUON, WI	12/18/2003
DEFAULT ON HEAL LOAN:		
AITKEN, STEVEN	PORTSMOUTH, OH	10/29/2003
ANDRONICO, KENNETH	FORT MYERS, FL	11/12/2003
HOLLOWAY, JIMMY	MONAHANS, TX 1	0/29/2003
MAMBY, AUDLEY	HASLETT, MI	10/27/2003
ORDONEZ-SANSUSKY, LISA	LOS ALTOS, CA	12/18/2003
SCHWARTZ, MOSHE	OWINGS MILLS, MD	12/18/2003
VILLARREAL, JOSE	MCALLEN, TX	12/18/2003

Dated: December 1, 2003.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 03–30552 Filed 12–9–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on:

(a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Substance Abuse Prevention and Treatment Block Grant Synar Report Format, FFY 2005–2007

(OMB No. 0930–0222; Revision)—Section 1926 of the Public Health Service Act [42 U.S.C. 300x–26] stipulates that funding Substance Abuse Prevention and Treatment (SAPT) Block Grant agreements for alcohol and drug abuse programs for fiscal year 1994 and subsequent fiscal years require States to have in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18. This section further requires that States conduct annually, random, unannounced inspections to ensure compliance with the law; that the State submit annually a report describing the results of the inspections, and the activities carried out by the State to enforce the required law, the success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18, and the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

Before making an award to a State under the SAPT Block Grant, the Secretary must make a determination that the State has maintained compliance with these requirements. If a determination is made that the State is not in compliance, penalties shall be applied. Penalties range from 10 percent of the Block Grant in applicable year 1 to 40 percent in applicable year 4 and subsequent years. Respondents include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Palau, Micronesia, and the Marshall Islands.

Regulations that implement this legislation are at 45 CFR 96.130, are approved by OMB under control number 0930–0163, and require that each State submit an annual Synar report to the Secretary describing their progress in complying with section 1926 of the PHS Act. The Synar report, due December 31 following the fiscal year for which the State is reporting, describes the results of the inspections and the activities carried out by the State to enforce the required law; the success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

SAMHSA's Center for Substance Abuse Prevention will request OMB approval of revisions to the current report format associated with section 1926 (42 U.S.C. 300x–26). The report format is changing significantly. Any changes in either formatting or content are being made to simplify the reporting process for the States and to clarify the information as the States report it; both outcomes will facilitate consistent, credible, and efficient monitoring of Synar compliance across the States and will reduce the reporting burden by the States. All of the information required in the new report format is already being collected and reported by the States.

ANNUAL REPORTING BURDEN

45 CFR citation	Number of respondents [1]	Responses per respondent	Hours per response	Total hours burden
Annual Report (Section I—States and Territories) 96.130(e)(1–3)	59	1	15	885
State Plan (Section II—States and Territories) 96.130(e)(4, 5)	59	1	3	177
196.130(g)	59	1	1	59
Total	59		18	1,121

[1] Red Lake Indian Tribe is not subject to tobacco requirements.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 3, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–30584 Filed 12–9–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comments Requested.

ACTION: 30-Day Notice of Information Collection Under Review: Memorandum of Understanding to Participate in an Employment Eligibility Confirmation Pilot Program (File No. OMB–18).

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (CIS) has submitted the following collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at 68 FR 54912 on September 19, 2003, allowing for a 60-day public review and comment period. No comments were received by the DHS.

A second notice was published in the **Federal Register** at 68 FR 67464 on December 2, 2003, allowing for an additional 30 days for public review and comment. The second notice incorrectly listed the Immigration and Customs Enforcement (ICE) as the DHS

component responsible for this information collection. For administrative reasons pending final organization realignment decisions, the legacy INS Office of Records, which has overall responsibility for the Employment Eligibility Confirmation Pilot Program, was temporarily placed within ICE, as reflected correctly in the September 19 initial notice. In early October, the INS Office of Records was formally transferred to the U.S.. Citizenship and Immigration Services (CIS). Therefore the second notice should have listed the CIS as the DHS component responsible for this information collection. Accordingly, the public has 30-days until January 9, 2004 to submit comments. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Homeland Security Office, 725—17th Street, NW., Suite 10102, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Memorandum of Understanding to Participate in an Employment Eligibility Confirmation Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No agency form number; File No. OMB–18, SAVE Program, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households. Employers electing to participate in a pilot will execute a Memorandum of Understanding with the Department of Homeland Security and the Social Security Administration (if applicable), that provides the specific terms and conditions governing the pilot and company information for each site that will be performing employment verification queries.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 1 hour and 20 minutes (1.33 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,650 hours annually.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536; (202) 514–3291. Comments and suggestions regarding items contained in this notice, especially regarding the estimated pubic burden and associated response time may also be directed to Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, NW., Washington, DC 20202.

Dated: December 4, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services.

[FR Doc. 03–30579 Filed 12–9–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–101]

Notice of Submission of Proposed Information Collection to OMB: Request for Withdrawals from Replacements Reserves/Residual Receipts Funds

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The proposed information is to be submitted by multifamily project owners to request authorization to withdraw funds from Replacements Reserves funds and/or Residual Receipts Funds. Invoices, receipts, and other documentation are submitted with the request.

DATES: *Comments Due Date:* January 9, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2502—pending) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB

approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Request for Withdrawals from Replacements Reserves/Residual Receipts Funds.

OMB Approval Number: 2502—pending.

Form Numbers: HUD–9250.

Description of the Need for the Information and its Proposed Use: The proposed information is to be submitted by multifamily project owners to request authorization to withdrawal funds from Replacements Reserves funds and/or Residual Receipts Funds. Invoices, receipts, and other documentation are submitted with the request.

Respondents: Not-for-profit institutions, State, local or tribal government.

Frequency of Submission: On occasion averaging once per annum.

	Number of respondents:	Annual responses:	×	Hours per response:	=	Burden hours:
Reporting Burden	8,500	8,500		0.50		4,250

Total Estimated Burden Hours: 135.

Status: This an existing collection in use without an OMB control number.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 3, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–30570 Filed 12–9–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Division of International Conservation Requests for Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act. An estimate of the information collection burden is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and/or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before February 9, 2004.

ADDRESSES: Send your comments and suggestions on specific requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection submission, explanatory information, and/or related forms, contact Anissa Craghead, Information Collection Clearance Officer, at 703–358–2445 or electronically at *Anissa_Craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies be given an opportunity to comment on information collection and record keeping activities (*see* 5 CFR 1320.8(d)). We are submitting a request to OMB to approve: (1) The revision of the collection of information for four of our multinational species conservation grant fund requests for proposals (Form numbers 3–2214 through 3–2217), and (2) the addition of two new requests for proposals (Form numbers 3–2263 and 3–2264). We are requesting a three-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0123.

Revisions to the currently approved requests for proposals include updating application forms to: (1) Comply with new Government-wide policy directing all funding programs to request Dunn & Bradstreet registration from all applicants; (2) reformat to comply with new Government-wide policies prescribing a standard RFP format; (3) add additional instructions for applicants; (4) request from domestic applicants the submission of standard forms 424, 424a, 424b and DI 2010; and (5) reformat the application cover page form to fit on one page. In addition, two new requests for proposals have been added to the information collection in order to meet our obligations under the requirements of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. The two new requests for proposals and associated forms will be translated into Spanish for the convenience of our Latin American and Caribbean applicants. The new requests for proposals (forms 3–2263 and 3–2264) are noted in the table below. In addition, this information collection is currently titled, ''Multinational Species Conservation Fund Requests for Proposals.'' Due to the addition of two new requests for proposals that are not part of the Multinational Species Conservation Fund, we are proposing to change the title of this information collection to ''Division of International Conservation Requests for Proposals.''

The information obtained from the first four requests for proposals listed below will be used to select conservation projects for grant funding in accordance with the criteria in several Acts of Congress. The Acts of Congress include the African Elephant Conservation Act, as amended (16 U.S.C. 4201–46), the Rhinoceros and Tiger Conservation Act, as amended (16 U.S.C. 5301–06), the Asian Elephant Conservation Act (16 U.S.C. 4261–4266), and the Great Ape Conservation Act (16 U.S.C. 6301–6305). The information obtained from the final two requests for proposals will be used to select conservation projects for grant funding in accordance with the U.S. Government's obligations under the Western Hemisphere Convention, and

authorized by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–43). The following table lists the requests for proposals, with their respective burden estimates, that we plan to submit to OMB for approval under the Paperwork Reduction Act.

Name of request for proposals (RFP)	Form No.	Estimated time to complete	Total annual responses	Total annual burden hours
African Elephant Conservation Fund RFP	3–2214	12	60	720
Rhinoceros and Tiger Conservation Fund RFP	3–2215	12	70	840
Asian Elephant Conservation Fund RFP	3–2216	12	50	600
Great Ape Conservation Fund RFP	3–2217	12	60	720
Wildlife Without Borders-Mexico RFP*	3–2263	12	40	480
Wildlife Without Borders-Latin America & the Caribbean RFP*	3–2264	12	55	660

* **Note:** These are new information collections.

Title: Division of International Conservation Requests for Proposals.

OMB Number: 1018–0123.

Service Form Numbers: 3–2214 through 3–2217, 3–2263 and 2–2264.

Frequency of Collection: Annually.

Description of Respondents: Foreign governments; domestic and foreign non-governmental organizations and individuals.

Total Annual Responses: 335 responses.

Total Annual Burden Hours: 4,020 hours.

We invite comments concerning this collection on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden on the public; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.

Dated: November 21, 2003.

Anissa Craghead,

Information Collection Clearance Officer, Fish and Wildlife Service

[FR Doc. 03–30594 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by January 9, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone (404) 679–4176; facsimile (404) 679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov*. Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Mark D. Farr, Contractor for U.S. Army Corp of Engineers, Vicksburg District, Vicksburg, Mississippi, permit number TE079841–0.

The applicant requests authorization to take (handle and release) the Ouachita rock pocketbook (*Arkansia wheeleri*) while conducting presence/absence and population demography surveys and individual tagging/marking in the Little River from Millwood Lake Dam to the mouth; Sulphur River from Wright Petman Dam to the mouth; McKinney Bayou, Hudson Creek, Maniese Bayou, and Bois d'Arc Creek, Arkansas.

Applicant: Roel Lopez, College Station, Texas, permit number TE079849–0.

The applicant requests authorization to trap Lower Keys rabbits (*Sylvilagus palustris hefneri*) from source populations and translocate them to Little Pine and Water Keys. Four Lower Keys rabbits (2 males and 2 females) would be introduced to Water Key. Two Lower Keys rabbits would be translocated to Little Pine Key to supplement genetic diversity and to resist negative effects of demographic stochastisity (random events) on a small founder population. The proposed activities would take place in Boca Chica Key, Lower Sugarloaf Key,

Saddlebunch Keys, Little Pine Key, and Water Keys, Monroe County, Florida.

Applicant: Michael Matthew Gangloff, Auburn University, Alabama, permit number TE079863–0.

The applicant requests to take (capture, examine, release, and collect relic shells) the fat threeridge (*Amblema neislerii*), Anthony's riversnail (*Athearnia anthonyi*), slender campeloma (*Campeloma decampi*), fanshell (*Cyprogenia stegaria*), dromedary pearlymussel (*Dromus dromas*), lacy elimia (*Elimia crenatella*), Chipola slabshell (*Elliptio chipolaensis*), purple bankclimber (*Elliptoideus sloatianus*), yellow blossom (*Epioblasma florentina florentina*), upland combshell (*Epioblasma metastriata*), catspaw (*Epioblasma obliquata obliquata*), southern acornshell (*Epioblasma othcaloogensis*), southern combshell (*Epioblasma penita*), tuberacled blossom (*Epioblasma torulosa torulosa*), turgid blossom (*Epioblasma tugidula*), shiny pigtoe (*Fusconia cor*), finerayed pigtoe (*Fusconia cuneolis*), cracking pearlymussel (*Hemistena lata*), pink mucket (*Lampsilis abrupta*), fine-lined pocketbook (*Lampsilis altilis*), shinyrayed pocketbook (*Lampsilis subangulata*), Alabama lampmussel (*Lampsilis viresens*), birdwing pearlymussel (*Lemiox rimosus*), round rocksnail (*Leptoxis ampla*), plicate rocksnail (*Leptoxis plicata*), painted rocksnail (*Leptoxis taeniata*), flat pebblesnail (*Lepyrium showalteri*), cylindrical lioplax (*Lioplax cyclostomaformis*), Alabama moccasinshell (*Mediondus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), gulf moccasinshell (*Medionidus penicillatus*), ring pink (*Obovaria retusa*), littlewing pearlymussel (*Pegias fibula*), white wartyback (*Plethobasus cicatricosus*), orangefoot pimpleback (*Plethobasus copperianus*), clubshell (*Pleurobema clava*), black clubshell (*Pleurobema curtum*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), flat pigtoe (*Pleurobema marshalli*), ovate clubshell (*Pleurobema perovatum*), rough pigtoe (*Pleurobema plenum*), oval pigtoe (*Pleurobema pyriforme*), heavy pigtoe (*Pleurobema taitianum*), inflated heelsplitter (*Potamilus inflatus*), triangular kidneyshell (*Ptychobranchus greeni*), armored marstonia (*Pyrgulopsis pachyta*), winged mapleleaf (*Quadrula fragosa*), Cumberland monkeyface (*Quadrula intermedia*), stirrupshell (*Quadrula stapes*), pale lilliput (*Toxolasma cylindrellus*), tulotoma snail (*Tulotoma magnifica*), and Cumberland bean (*Villosa trabalis*) while conducting presence and absence surveys. The proposed activities would primarily occur in the rivers, lakes, and streams in the Mobile, Tennessee, and Appalachicola rivers, but also in other drainages within Alabama, Florida, Georgia, and Mississippi.

Applicant: Environmental Services, Inc., Steven M. Jones, Lithonia, Georgia, permit number TE078880–0.

The applicant requests authorization to take (capture, exam, photograph, temporarily hold, and release) the gray bat (*Myotis grisescens*) while conducting a presence/absence survey at a proposed development site in Bartow County, Georgia.

Applicant: Arkansas Highway and Transportation Department, Little Rock, Arkansas, permit number TE079883–0.

The applicant requests authorization to take (capture, exam, and release) the gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Louisiana black bear (*Ursus americanus luteolus*), Arkansas fatmucket (*Lampsilis powellii*), Curtis pearlymussel (*Epioblasma florentina curtisii*), fanshell (*Cyprogenia stegaria*), fat pocketbook (*Potamilus capax*), Ouachita rock-pocketbook (*Arkansia wheeleri*), pink mucket (*Lampsilis abrupta*), scaleshell (*Leptodea leptodon*), speckled pocketbook (*Lampsilis streckeri*), turgid-blossom (*Epioblasma turgidula*), winged mapleleaf (*Quadrula fragosa*), magazine mountain shagreen (*Mesodon magazinensis*), American burying beetle (*Nicrophorus americanus*), cave crayfish (*Cambarus aculabrum*), and cave crayfish (*Cambarus zophonastes*) while conducting presence/absence surveys. The proposed activities will take place throughout the State of Arkansas.

Applicant: Geological Survey of Alabama, Thomas E. Shepard, Tuscaloosa, Alabama, permit number TE079923–0.

The applicant requests authorization to take (capture and release) the boulder darter (*Etheostoma wapiti*), slackwater darter (*Etheostoma boschungi*), and snail darter (*Percina tanasi*) while conducting presence/absence surveys in the Elk River System, Alabama.

Applicant: Eric J. Baka, Louisiana Department of Wildlife and Fisheries, Baton Rouge, Louisiana, permit number TE079972–0.

The applicant requests authorization to take (capture, band, monitor nests, install drilled and insert cavities, translocate, release, and monitor) adult and nestling red-cockaded woodpeckers (*Picoides borealis*) while conducting presence and absence surveys, demographic monitoring and cavity restricting, and translocation activities. The proposed activities would take place in the State of Louisiana.

Applicant: Dr. Kathryn Stephenson Craven, Armstrong Atlantic State University, Savannah, Georgia, permit number TE079976–0.

The applicant requests authorization to take (excavate nests post hatching, mark nests with wooden stakes, open unhatched eggs, and collect dead hatchlings and embryos for classification or preservation for research and educational purposes) loggerhead, green, Kemp's Ridley, leatherback, and hawksbill sea turtles while evaluating nest hatch success, sampling of hatched eggs for bacteria/fungus, investigating nest-ant interactions, monitoring of the population for nesting adult sea turtles, and conducting necropsy on stranded sea turtles. The proposed activities would occur along the coastline of the State of Georgia.

Applicant: Mr. Donald Robohm, Sea Chick Mississippi Inc., Escatawpa, Mississippi, permit number TE080009–0.

The applicant requests authorization to take (harass, conduct research using non-lethal aversion techniques) the endangered brown pelican, *Pelecanus occidentalis,* at Sea Chick's facility in Jackson County, Mississippi, for the purpose of reducing fish predation at a commercial fish farming operation.

Dated: November 24, 2003.

J. Mitch King,

Deputy Regional Director.

[FR Doc. 03–30586 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Hanford Reach National Monument Federal Advisory Committee Meetings

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Hanford Reach National Monument Federal Planning Advisory Committee meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is announcing three meetings of the Hanford Reach National Monument Federal Planning Advisory Committee (Committee). In these meetings, the Committee will continue its work on making recommendations to the Service and the Department of Energy (DOE) on the preparation of a Comprehensive Conservation Plan and associated Environmental Impact

Statement (CCP/EIS) which will serve as a long-term management plan for the Hanford Reach National Monument. The Committee's recommendations will focus on identifying and reconciling land management issues, while meeting the directives of Presidential Proclamation 7319 establishing the monument.

DATES: The Committee has scheduled the following meetings:

1. Thursday, January 15, 2004, 9:30 a.m. to 4:30 p.m., Richland, Washington.

2. Wednesday, February 25, 2004, 9:30 a.m. to 4:30 p.m., Richland, Washington.

3. Thursday, April 29, 2004, 9:30 a.m. to 4:30 p.m., Richland, Washington.

ADDRESSES: All three meetings will be held at the Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120A, Richland, Washington.

Written comments may be submitted to Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument Federal Planning Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, Washington, 99352; fax (509) 375–0196. Copies of the draft meeting agenda may be obtained from the Designated Federal Official. Comments may be submitted via email to *hanfordreach@fws.gov.* Additional information regarding the monument and the CCP is available on the monument's Internet site at *http://hanfordreach.fws.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning the meetings, contact Mr. Greg Hughes, Designated Federal Official, via telephone at (509) 371–1801, or fax at (509) 375–0196.

SUPPLEMENTARY INFORMATION: Committee meetings are open to the public. Verbal comments may be submitted during the course of the meetings, and written comments may be submitted at the close of the meetings, mailed to the monument office address, or submitted via e-mail. Over the next several months, the Committee will receive information from the Planning Team on the Draft CCP/EIS, and present advice to the Service and DOE on draft products for the CCP/EIS. The Committee will also nominate and elect a chair and a vice-chair after new Committee members are appointed.

Dated: November 26, 2003.

David J. Wesley,

Acting Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 03–30585 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Federal Acknowledgment; Final Determination Against Federal Acknowledgment of the Snohomish Tribe of Indians

AGENCY: Assistant Secretary for Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to section 83.10(m), notice is hereby given that the Assistant Secretary—Indian Affairs (AS–IA) declines to acknowledge a group known as the Snohomish Tribe of Indians (STI), c/o Mr. William Matheson, Suite 201, 144 Railroad Avenue, Edmunds, Washington 98020, as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioning group does not satisfy all seven of the criteria set forth in part 83 of title 25 of the Code of Federal Regulations (25 CFR part 83), specifically criteria 83.7(a), (b), (c), and (e), and therefore does not meet the requirements for a government-to-government relationship with the United States.

DATES: This determination is final and will become effective March 9, 2004, pursuant to section 83.10(l)(4), unless a request for reconsideration is filed pursuant to section 83.11.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the AS–IA by 209 DM 8.

A notice of the proposed finding (PF) to decline to acknowledge the STI was published in the **Federal Register** on April 11, 1983 (48 FR 15540–1).

This final determination (FD) is made following a review of the STI's response to the PF, the public comments on the PF, and the STI's response to the public comments. It reaches conclusions based on a review and analysis of the existing record, incorporating the evidence considered for the PF, and new evidence in the form of documentation and arguments received from the petitioner and third parties. This notice is based on a determination that the group does not satisfy all seven mandatory criteria for acknowledgment at sections 83.7 (a)–(g).

Criterion 83.7(a): Criterion 83.7(a) requires that the petitioner be identified as an American Indian entity on a substantially continuous basis since 1900. The petitioner has not demonstrated that it meets the requirements before 1950. The petitioner claims that its mostly off-reservation ancestors were part of the historical Snohomish tribe primarily based at the Tulalip Reservation and remained so until 1935, when the historical Snohomish tribe and other tribes at this reservation reorganized as the Tulalip Tribes of the Tulalip Reservation under the Indian Reorganization Act (IRA). Available evidence, however, shows that the petitioner's ancestors were not part of the historical Snohomish tribe. Thus, identifications of the historical Snohomish tribe on the Tulalip Reservation before 1935 did not constitute identifications for the petitioner. In addition, there was no identification of an off-reservation group of STI ancestors between 1900 and 1935.

References to a claims organization called the ''Snohomish Tribe of Indians,'' which included a few of the STI's off-reservation ancestors, occurred in the available evidence only in 1917. The organization was referred to as a Snohomish Indian entity only by a few of its members and a lawyer hired as its spokesperson, which is not evidence within the meaning of 83.7(a). External observers did not identify this group as an American Indian entity. Some of the petitioner's off-reservation ancestors were part of another claims organization called the ''Snohomish Tribe of Indians'' that existed from 1926 to 1935. This organization's membership included reservation Snohomish, off-reservation ancestors of the petitioning group, and other non-reservation Snohomish descendants. External observers identified this group mainly in its capacity as a claims organization that represented individuals with Indian ancestry. Thus identifications of the 1926 Snohomish claims organization did not constitute identifications of a predecessor group of the petitioner. The 1926 Snohomish claims organization ceased to exist in 1935.

There are no available identifications as an entity of a separate group of the petitioner's ancestors from 1935 to 1949, when the petitioner claims such an entity existed following the reorganization of the Tulalip Tribes of the Tulalip Reservation under the IRA. The evidence shows that the petitioner has not been identified as an American

Indian entity from 1900 to 1949 (49 years) and has been identified as an American Indian entity only since 1950, when it originally formed to pursue claims before the Indian Claims Commission (ICC). Therefore, the petitioner does not meet the requirements of criterion 83.7(a).

Criterion 83.7(b): The petitioner has not demonstrated that it meets the requirements of criterion 83.7(b), which requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from first sustained contact with non-Indians until the present. In its response to the PF, the petitioner submitted documents pertaining to activities from 1855 until 1999. The newly-submitted documents demonstrated some additional informal social relationships among the petitioner's ancestors on the Quimper Peninsula in Washington State, as well as some additional interaction between some STI ancestors and non-STI Indian households in the Sultan, Washington, area in the late 19th century. However, the evidence submitted by the petitioner, in conjunction with the other evidence in the record, does not demonstrate community as defined under criterion 83.7(b) at any time from first sustained contact with non-Indians to the present.

The petitioner's members largely descend from a number of mid- and late-19th century marriages between Indian women and non-Indian men. Few subsequent marriages have occurred either among members of STI or between members of STI and other groups with Indian ancestry, and thus the group lacks the kinship ties that such marriages create.

The petitioner has not demonstrated that a significant number of its ancestors maintained relationships with the historical Snohomish tribe located on the Tulalip Reservation, or with other Snohomish descendants living off the Tulalip Reservation prior to the formation of the 1926 Snohomish claims organization. This claims organization also included non-Snohomish Indian descendants who are ancestors of many of the current petitioner's members.

Interviews and affidavits submitted by the petitioner provide no evidence for community among the petitioner's members from 1935 to 1999. Interviews conducted by the Department in 2003 indicate that most current members do not regularly interact with each other outside of events sponsored by the formal STI organization. The evidence does not demonstrate that the petitioner has existed as a community historically or presently. Therefore, the petitioner has not met criterion 83.7(b).

Criterion 83.7(c): Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from first sustained contact with non-Indians to the present. A review of the available evidence does not demonstrate that the petitioner has met the requirements of this criterion at any time. The petitioner claims that its off-reservation ancestors were part of the historical Snohomish tribe until 1935, and that reservation and off-reservation Snohomish leaders worked with each other until that year. The available evidence does not show that such political cooperation took place between the petitioner's off-reservation ancestors and the reservation Snohomish before 1926. In addition, the evidence does not demonstrate any separate political leadership, formal or informal, existed for any separate off-reservation group of the petitioner's ancestors before 1917. Some of the petitioner's ancestors were part of a 1917 claims organization called the ''Snohomish Tribe of Indians,'' which was described in the available evidence for that year only and had no connection to the reservation Snohomish. The available evidence does not demonstrate that this 1917 organization exercised political leadership or authority over petitioner's ancestors.

Many of the petitioner's ancestors also were part of the 1926 Snohomish claims organization, which included both reservation and non-reservation Snohomish, including some of the STI ancestors. This organization had few functions beyond seeking claims for Indians of Snohomish descent, and did not represent a formalization of the tribal political structure for the historical Snohomish tribe. During the time the 1926 Snohomish claims group existed, the reservation Snohomish continued to have their own political organization and authority. There is no available evidence that this 1926 Snohomish claims organization exerted any political influence over an actual off-reservation entity of the petitioner's ancestors. The 1926 Snohomish claims organization ceased to appear in the available evidence in 1935, after the group lost its claims suit. Therefore, the available evidence does not demonstrate that the petitioner has met the requirements of 83.7(c) from first sustained contact with non-Indians to 1935.

There is no evidence in the record to demonstrate that the 1926 Snohomish claims organization continued after 1935. From 1935 until 1950, there is no available evidence to demonstrate that the petitioner maintained any type of political organization, formal or informal. In 1950, the petitioner formed the ''Snohomish Tribe of Indians'' in order to pursue claims before the ICC. There is no available evidence to support the petitioner's contention that the 1950 organization was a continuance of the 1926 Snohomish claims organization. Unlike the earlier organization, the 1950 organization was composed almost entirely of off-reservation STI ancestors. The group's leadership concentrated their energy on the claims lawsuit, with some additional discussion and concern over hunting and fishing rights. The group's leadership also joined some ''intertribal'' organizations. The group continued to pursue the claims issue, which was eventually settled in the late 1960's. The leadership pursued obtaining land for a reservation in 1970, and filed a petition for Federal acknowledgment in 1975. Between 1983 and 2003, the group's leaders have continued to pursue Federal acknowledgment and appear to have become somewhat more active in advocating on behalf of some members. However, the evidence presented by the petitioner has not demonstrated that the leadership maintained a bilateral relationship with the majority of the group, or that most of the members were involved in or knowledgeable about the group's political processes. The evidence does not demonstrate that the actions taken by the leadership were of importance to the majority of the group. The available evidence does not demonstrate that the petitioner maintained political authority or influence over its members since its formation in 1950. Therefore, the petitioner does not meet the requirements of criterion 83.7(c).

Criterion 83.7(d): The petitioner's 1978 constitution and by-laws and 1978 enrollment ordinance were found sufficient to meet the requirements of 83.7(d) in the PF. The Department obtained a copy of the petitioner's governing documents amended and certified on September 18, 1994, which describe its membership criteria and current governing procedures. Because the petitioner has a constitution and an enrollment ordinance, certified by its governing body, that describe its membership criteria and the procedures through which it governs its affairs and its members, the petitioner meets the requirements of criterion 83.7(d).

Criterion 83.7(e): The PF found that the STI did not meet criterion 83.7(e)(1) because a significant percentage of STI

members could not demonstrate Snohomish ancestry. Only 59 percent of STI's 836 members, descending from about 38 or 39 different family lines at the time of the PF, had documented descent from the historical Snohomish tribe.

The PF found that the STI provided an official membership list, separately certified by the group's governing body, as required by 83.7(e)(2). For the FD, the petitioner submitted a membership list, dated March 12, 1999, that identified 1,390 members and was virtually identical with the membership list used for the PF except for the addition of new members. The petitioner's governing body certified the updated membership list by resolution as required under criterion 83.7(e)(2). After auditing the petitioner's membership files and correcting the discrepancies in the 1999 membership list, the current adjusted STI membership totaled 1,113.

Based on new information submitted by the petitioner and the Tulalip Tribes of the Tulalip Reservation, or located by the Department, and other evidence in the record, the Department re-evaluated the STI family lines for evidence of descent from the historical Snohomish tribe. Twenty of the STI family lines, identified as descending from the historical Snohomish tribe in the PF, remain unchanged. Two family lines not previously determined to demonstrate Snohomish ancestry now have been sufficiently documented to show descent from the historical Snohomish tribe, and two ''new'' family lines, originally considered as part of pre-existing STI family lines, also were found to demonstrate Snohomish descent.

Based on the analysis described above, the evidence for this finding shows that 69 percent of the STI membership (763 of 1,113 members) have documented descent from the historical Snohomish tribe. The petitioner has not demonstrated that the remaining 31 percent of its membership (350 of 1,113 members) are of Snohomish descent or are descended from other Indian tribes that had amalgamated with the petitioner's Snohomish ancestors at some point in history to form a separate and distinct entity. The evidence does not demonstrate that the petitioner as a whole descends from the historical Snohomish tribe. Therefore this FD concludes that the petitioner does not meet criterion 83.7(e).

Criterion 83.7(f): This FD affirms the conclusion of the PF that the petitioner is not principally composed of members of another acknowledged North American Indian tribe. Since the PF, the petitioner obtained enrollment statements from most of its members, who declared that they did not have membership in any other federally acknowledged tribe. Examination of the membership lists of federally recognized tribes in the area did not reveal any names of STI members.

Criterion 83.7(g): This FD affirms the conclusion of the PF that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Under Section 83.10(m), the AS–IA is required to decline to acknowledge that a petitioner is an Indian tribe if it fails to satisfy any one of the criteria in Section 83.7. The petitioner did not submit evidence sufficient to meet criteria 83.7(a), (b), (c), and (e), and, therefore, does not satisfy the requirements for acknowledgment.

This determination is final and will become effective 90 days from publication of this notice, unless a request for reconsideration is filed pursuant to section 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Indian Appeals (section 83.11(a)(1)). The petitioner's or interested party's request must be received no later than March 9, 2004 of the AS–IA's determination in the **Federal Register** (section 83.11(a)(2)).

Dated: December 2, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–30575 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–45–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of an amendment to a tribal-State gaming compact taking effect between the Little Traverse Bay Bands of Odawa Indians and the State of Michigan.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of the approved tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has deemed approved the amendment to the Class III gaming compact between the Little Traverse Bay Bands of Odawa Indians and the State of Michigan. By the terms of IGRA, the amendment is considered approved, but only to the extent that the amendment is consistent with the provisions of IGRA. The amendment authorizes the addition of a second gaming site in addition to the current site in Petoskey, Michigan. It also creates a 10 county geographical exclusivity area. In exchange for the geographical exclusivity, the tribe agrees to pay between 10 and 12 percent of net win from class III electronic games at the tribe's second site, depending on the amount of actual revenues. The payment to the State ceases if the scope of non-Indian gaming is expanded within the State or if a federally recognized tribe opens a class III gaming facility within the 10 county areas. In addition the payment is reduced if a newly recognized tribe opens a class III facility within the 10 county areas.

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 2, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–30634 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–PO]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held January 15, 2004 in Miles City, MT beginning at 8 a.m. When determined, the meeting place will be announced in a news release. The public comment period will

begin at approximately 11 a.m. and the meeting will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301. Telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics we plan to discuss include:

Sustaining Working Landscapes Initiative; OHV travel planning update; Recreation 2003 Season Report; Weatherman Draw subcommittee update; Billings shooting area subcommittee update; and CBNG Update and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: December 1, 2003.

David McIlnay,

Field Manager.

[FR Doc. 03–30553 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–ET; NMNM 106227]

Public Land Order No. 7592; Withdrawal of Federal Mineral Estate Within the Red Rock Wildlife Area, New Mexico

AGENCY: Bureau of Land Management.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 712 acres of Federal mineral estate from location and entry under the United States mining laws for 20 years for the Bureau of Land Management to protect desert bighorn sheep habitat within the Red Rock Wildlife Area.

EFFECTIVE DATE: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Philip Rhinehart, BLM Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005, 505–525–4426.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the Federal mineral estate in the following described lands is hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. Ch. 2 (2000), to protect desert bighorn sheep habitat within the Red Rock Wildlife Area:

New Mexico Principal Meridian

T. 18 S., R. 18 W.,
Sec. 9, lots 1 to 4, inclusive, S½NE¼SW¼, S½NW¼SE¼, and SE¼SE¼;
Sec. 15, NW¼NW¼ and W½SW¼;
Sec. 16, lots 1 to 5, inclusive, and NW¼SE¼;
Sec. 21, NE¼NE¼, W½NE¼, and W½NW¼;
Sec. 22, NW¼NW¼.

The areas described aggregate approximately 712 acres in Grant County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: October 30, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–30622 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Northeast Region Notice of Availability of Boston Harbor Islands General Management

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Final General Management Plan and Final Environmental Impact Statement (FEIS) for Boston Harbor Islands National Recreation Area in Massachusetts, both of which are now available from the NPS.

ADDRESSES: The Final General Management Plan and Final Environmental Impact Statement (FEIS) are available on the Internet at *http://www.nps.gov/boha/pphtml/facts.html.* Requests for copies should be sent to George E. Price, Jr., National Park Service Project Manager, Boston Harbor Islands, 408 Atlantic Avenue, Suite 228, Boston, Massachusetts 02110 or *George_Price@nps.gov.*

FOR FURTHER INFORMATION CONTACT: George Price at 617–223–8667.

SUPPLEMENTARY INFORMATION: In collaboration with the Boston Harbor Islands Partnership, the National Park Service prepared a Draft Environmental Impact Statement in accordance with section 102(c) of the National Environmental Policy Act of 1969. NPS received approximately 100 written comments and held 8 formal public meetings during the 60-day public comment period on the Draft EIS. The comments from individuals and public agencies did not require the NPS to add additional alternatives, significantly alter existing alternatives, or make changes to the impact analysis of the effects of any alternative. Therefore, an abbreviated format is used for the responses to comments in the Final EIS, in compliance with the 1978 implementing regulations (40 CFR 1503.4[c]) for National Environmental Policy Act.

Dated: October 14, 2003.

Marie Rust,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 03–30559 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–51–M

DEPARTMENT OF THE INTERIOR

Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement for Gulf Islands National Seashore (FL and MS)

AGENCY: National Park Service.

ACTION: Notice.

SUMMARY: This notice is being published in accordance with 40 CFR 1506.6. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the preparation of an Environmental Impact Statement for the General Management Plan for Gulf Islands National Seashore. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the National Seashore. This General

Management Plan/Environmental Impact Statement is being prepared to the requirements of the National Parks and Recreation Act of 1978, Public Law 95–625, and in accord with Director's Order Number 2, the planning directive for National Park Service units.

The National Park Service will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the managaement of Gulf Islands National Seashore. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process at each of the public meetings. Suggestions and ideas for managing the cultural and natural resources and visitor experiences at the park are encouraged.

Anonymous comments will not be considered. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. However, individual respondents may request that we withhold their names and addresses from the public record, and we will honor such requests to the extent allowed by law. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. Please note that due to public disclose requirements, the National Park Service, if requeted, may have to make the names and addresses of those who submit written comments public.

DATES: Locations, dates, and times of public scopping meetings will be published in local newspapers and may also be obtained by contacting the park Superintendent. This information will also be published on the General Management Plan Web site (*http://www.nps.gov/guis*) for Gulf Islands National Seashore.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Guld Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida, 32563.

FOR FURTHER INFORMATION CONTACT: Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida, 32563, Telephone: (850) 934–2604, E-mail: *Guis_Superintendent@nps.gov*.

SUPPLEMENTARY INFORMATION: Gulf Islands National Seashore is located on barrier islands, keys, and mainland peninsulas in the Pensacola, Florida area and on a series of Gulf Coast barrier islands between Pascagoula and Gulfport, Mississippi, Gulf Islands National Seashore was authorized by Congress in 1971, to provide preservation of 150 miles of coastline, barrier islands,a nd historic fortifications. The last General Management Plan was completed in 1978 and in the ensuing years must has changed. A revised General Management Plan and Environmental Impact Statement would provide the National Seashore with better guidance and direction in regard to management of natural and cultural resources and providing a quality visitor experience.

The plan will provide direction to correct existing management deficiencies through the establishment of management prescriptions, carrying capacities and appropriate types and levels of development and recreational use for all areas of the park. Resource protection, visitor experiences and community relationships will be improved through completion and implementation of the General Management Plan.

Public documents associated with the planning effort, including all newsletters, will be posted on the internet through the Park's Web site at *http://www.nps.gov/guis.*

The Draft and Final General Manageament Plan and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Acting Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: November 7, 2003.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 03–30561 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Morristown National Park General Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the Final General Management Plan and Environmental Impact Statement (GMP/EIS) for Morristown National Historical Park, New Jersey, that proposes a long-term approach to managing the park. Three management alternatives are presented that are consistent with the park's mission, NPS policy, and other laws and regulations. The alternatives incorporate various management prescriptions and zones to ensure that the park's resources are preserved, and that the public can enjoy the park. The environmental consequences that can be anticipated from implementing the various alternatives are documented. Impact topics include cultural and natural resources, visitor experience, park operations, the socioeconomic environment, impairment of resources, and sustainability. Alternative C was identified as the preferred alternative.

The Draft GMP/EIS was available for public review from March 7, 2003 to May 9, 2003. Copies of the comment letters and the National Park Service's responses to those comments are included in the final document. Draft text and graphics were refined and clarified where necessary, and respond to the public comments. Alternative C has been identified as the proposed action in the Final document. The Final GMP/EIS will be available to the public for 30 days, after which, a Record of Decision (ROD) will be signed indicating which alternative has been selected as the proposed plan, and authorizing the National Park Service to implement the plan.

SUPPLEMENTARY INFORMATION: To request a copy of the Final GMP/EIS please contact the National Park Service, Park Planning and Special Studies at the address above. Copies of the Final GMP/EIS will also be available for review at the following locations:

- Morristown National Historical Park headquarters, 30 Washington Place, Morristown, New Jersey
- Morris County Library, 30 E. Hanover Avenue, Whippany, New Jersey
- The Joint Free Public Library of Morristown and Morris Township, 1 Miller Road, Morristown, New Jersey
- Mendham Borough Library, 10 Hilltop Road, Mendham, New Jersey
- Bernards Township Library, 32 S. Maple Avenue, Basking Ridge, New Jersey
- Bernardsville Public Library, 1 Anderson Hill Road, Bernardsville, New Jersey

• Somerset County Library, 1 Vogt Drive, Bridgewater, New Jersey

Dated: October 8, 2003.

Robert W. McIntosh,

Associate Regional Director, Northeast Region.

[FR Doc. 03–30560 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for the Yellow Barn/Chautauqua Tower Rehabilitation

AGENCY: National Park Service, Interior.

ACTION: Availability of the Environmental Assessment for the Yellow Barn/Chautauqua Tower Rehabilitation, Montgomery County, Maryland.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service (NPS) policy, the NPS announces the availability of an Environmental Assessment (EA) for the rehabilitation/reconstruction of the Yellow Barn and Chautauqua Tower at Glen Echo Park, a unit of the George Washington Memorial Parkway. Glen Echo Park is the site of a former amusement park that operated from the late 1890's to 1968. The park is currently operated under a Cooperative Agreement between Montgomery County and the NPS. The buildings provide the Glen Echo Park Partnership for Arts and Culture with administrative space, classrooms, and artists studios. the Chautauqua Tower was constructed in 1891 and the Yellow Barn in 1914 and both buildings are listed on the National Register of Historic Places as contributing elements of the Glen Echo Park Historic District. The Electrical/Mechanical/Plumbing systems of both buildings have reached the end of their design life. Both buildings suffer from numerous structural defects which adversely affect the availability of education and program space. Significant portions of both buildings cannot currently be used due to structural instability or lack of appropriate egress. The EA examines several alternatives for the rehabilitation/reconstruction of the buildings. The subject project is designed to provide safe, accessible classroom and studio space to park users, while maintaining the character of the Glen Echo Park Historic District. The NPS is soliciting comments on this EA. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act.

DATES: The EA will remain available for public comment until January 9, 2003. Written comments should be received no later than this date.

ADDRESSES: Comments on this EA should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. The EA will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the GWMP Headquarters, Turkey Run Park, McLean, Virginia; and at the following libraries: Little Falls Library, 5501 Massachusetts Avenue, Bethesda, Maryland, Potomac Library, 10101 Glenolden Drive, Potomac, Maryland, and Bethesda Library, 7400 Arlington Road, Bethesda, Maryland.

SUPPLEMENTARY INFORMATION: An Environmental Impact Statement (EIS) analyzed and selected a Management Plan for Glen Echo Park in February 2001. This Management Plan aims to balance natural/cultural resource protection and visitor use. Pursuant to the EIS, the *stabilization and rehabilitation* of Glen Echo Park structures will proceed in accordance with the recommendations in the *Cost Estimating Criteria for Stabilization & Rehabilitation of Historic Glen Echo Park* (Vitetta Group, 1998) and the subsequent *Glen Echo Park Stabilization and Rehabilitation Plan* (NPS, Montgomery County, State of Maryland, 1999). Rehabilitation projects have already been completed on the Spanish Ballroom and the North Arcade, two additional contributing elements to the Glen Echo Historic District as part of the Glen Echo Park Rehabilitation Project, pursuant to cooperative agreement between the State of Maryland, Montgomery County, and the NPS. Work on this project began in 1999 and is scheduled to finish in 2005.

All interested individuals, agencies, and organizations are urged to provide comments on the EA. The NPS, in making a final decision regarding this matter, will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Park Ranger Jeffrey Pinkard (703) 289–2516.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 03–30558 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–DC–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement.

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces its intent to prepare a General Management Plan and Environmental Impact Statement (GMP/EIS) for the Flight 93 National Memorial, Pennsylvania. Prepared by planners at the Flight 93 National Memorial, with assistance from the NPS Northeast Region, the Flight 93 Advisory Commission, the Flight 93 Memorial Task Force, the Families of Flight 93, Inc., advisors, and consultants, the GMP/EIS will propose a long-term approach to managing the Flight 93 National Memorial. Consistent with the memorial's mission, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the memorial over the next 15 to 20 years. The alternatives will incorporate various zoning, design, and management prescriptions to ensure resource preservation and public enjoyment of the memorial. The environmental consequences that could result from implementing the various alternatives will be evaluated in the plan. Impact topics will include cultural and natural resources, visitor experience, park operations, the socioeconomic environment, impairment, and sustainability. The public will be invited to express concerns about the management and design of the memorial early in the process through public meetings and other media; and will have an opportunity to review and comment on a draft GMP/EIS. Following public review processes outlined under NEPA, the final plan will become official, authorizing implementation of a preferred alternative. The target date for the Record of Decision is September 2005.

Scoping: The National Park Service issued a project scoping newsletter on September 11, 2003 to solicit comments from interested parties; to identify known resources and issues of special concern; and to offer recommendations for the design, construction, and long-term management of the Flight 93 National Memorial. The newsletter and comment form may be obtained at *http://www.flight93memorialproject.org* or by

contacting the project manager. An agency scoping meeting is scheduled for December 15, 2003 from 10 a.m.–12 p.m. at the National Park Service project office, 109 West Main Street, Suite 104, Somerset, PA 15501.

Persons interested in submitting written comments may do so via mail, hand-delivery, facsimile or e-mail to Jeffrey P. Reinbold, Flight 93 NM Project Manager, at the following address:

Jeffrey P. Reinbold, Project Manager, National Park Service, 109 West Main Street, Suite 104, Somerset, PA 15501, Facsimile: (814) 443–2180, E-Mail: jeff_reinbold@nps.gov.

DATES: The National Park Service will accept scoping comments from the public until January 9, 2004.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Reinbold, National Park Service, 109 West Main Street, Suite 104, Somerset, PA 15501; telephone: (814) 443–4557; e-mail: *jeff_reinbold@nps.gov.*

Dated: November 20, 2003.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 03–30563 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–25–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Chalmette Battlefield Task Force Committee Meeting

AGENCY: National Park Service, Jean Lafitte National Historical Park and Preserve

ACTION: Notice of Task Force meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.1, section 10(a)(2), that a meeting of the Chalmette Battlefield Task Force Committee will be held at 3 p.m. at the following location and date:

DATES: Tuesday December 16, 2003.

ADDRESSES: The Council Chambers Meeting Room at the St. Bernard Parish Government Complex, 8245 W. Judge Perez Drive in Chalmette, LA 70042.

FOR FURTHER INFORMATION, CONTACT: Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 419 Decatur Street, New Orleans, LA 70130, (504) 589–3882, extension 137 or 108.

SUPPLEMENTARY INFORMATION: The purpose of the Chalmette Battlefield Task Force Committee is to advise the Secretary of the Interior on suggested improvements at the Chalmette Battlefield site within Jean Lafitte National Historical Park and Preserve. The members of the Task Force are as follows: Ms. Elizabeth McDougall, Ms. Faith Moran, Mr. Anthony A. Fernandez, Jr., Mr. Drew Heaphy, Mr. Alvin W. Guillot, Mrs. George W. Davis, Mr. Eric Cager, Mr. Paul V. Perez, Captain Bonnie Pepper Cook, Mr. Michael L. Fraering, Colonel John F. Pugh, Jr., and Geraldine Smith.

The matters to be discussed at this meeting will include a workshop on the mission, purpose, and significance of the Task Force and a planning session for the pending open house meetings. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the committee a written statement concerning the matters to be discussed. Written statements may also be submitted to the superintendent at the address above. Minutes of the meeting will be available at park headquarters for public inspection at 419 Decatur Street, New Orleans, Louisiana for public inspection approximately 4 weeks after the meeting and on the park Web site at *http://www.nps.gov/jela.htm.*

Dated: November 7, 2003.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 03–30562 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

National Park Service

Great Sand Dunes National Park Advisory Council Meeting

AGENCY: National Park Service, DOI.

ACTION: Announcement of meeting.

SUMMARY: Great Sand Dunes National Monument and Preserve announces a meeting of the Great Sand Dunes National Park Advisory Council, which was established to provide guidance to the Secretary on long-term planning for Great Sand Dunes National Monument and Preserve.

DATES: The meeting date is:

1. January 12–13, 2004, 9 a.m.–5 p.m., Blanca, CO.

ADDRESSES: The meeting location is:

1. Blanca, Colorado—Blanca Ft. Garland Community Center, 17591 Hwy 160, Blanca, CO 81123.

FOR FURTHER INFORMATION CONTACT: Steve Chaney, (719) 378–6311.

SUPPLEMENTARY INFORMATION: At the fifth meeting of the Great Sand Dunes National Park Advisory Council, the council will learn about resources and opportunity analysis, which involves mapping significant resource areas and includes review of existing information about natural and cultural resources and visitor opportunities.

Hal Grovert,

Acting Regional Director.

[FR Doc. 03–30564 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Commission Notice of Public Meeting

AGENCY: National Capital Memorial Commission, National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the National Capital Memorial Commission (the Commission) will be held on Thursday, December 11, 2003, at 1 p.m., at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and its environs. In addition to discussing general matters and conducting routine business, the Commission will review the status of legislative proposals introduced in the 108th Congress to establish memorials in the District of Columbia and its envrons.

(1) Activation of the provisions of the Commemorative Works Clarification Act of 2003.

(2) Legislation currently under consideration by the 108th Congress.

(3) Site Selection Study, Victims of Communism Memorial.

Information Items

(1) Status reports on Congressional actions taken on bills previously reviewed by the Commission.

Other Business

(1) General matters and routine business.

The meeting will be open to the public. Any person may file with the Commission written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission, at (202) 619–7097.

DATES: December 11, 2003, at 1 p.m.

ADDRESSES: Room 312, National Building Museum, 5th and F Streets, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, (202) 619–7097.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorial in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service.
Chairman, National Capital Planning Commission.
Architect of the Capitol.
Chairman, American Battle Monuments Commission.
Chairman, Commission of Fine Arts.
Mayor of the District of Columbia.
Administrator, General Services Administration.
Secretary of Defense.

Dated: November 17, 2003.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 03–30557 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–71–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: U.S. Department of Justice, Federal Bureau of Investigation, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate a cultural item in the possession of the U.S. Department of Justice, Federal Bureau of Investigation, San Francisco, CA, that meets the definition of sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a braided scalp with a decorative covering of red wool and contrasting blue wool cross.

In 1876, Corporal William O. Taylor acquired the scalp under unknown circumstances while serving as a member of General George A. Custer's Sioux Expedition. The scalp was subsequently acquired by Mr. Alexander Acevedo. On April 4, 1995, Butterfield and Butterfield Auction House, San Francisco, CA, held a sale of items under Mr. Acevedo's control. The estimated sale price of the scalp was listed in the auction catalog as between $3,000 and $4,000. On May 5, 1995, the scalp was sold to Ripley's Entertainment, Orlando, FL, for $7,150.

Accompanying the scalp in the auction catalog was a pipe tomahawk, also acquired by Corporal Taylor in 1876. A faded label attached to the pipe tomahawk reads, ''A Black Hills Indian Tomahawk and Pipe/Captured by ... he was ... killed ... and scalped the ... 35 years ... August 19, 1876.'' The auction catalog listed the battle of Slim Buttes as the source of the pipe tomahawk. It is believed that Corporal Taylor acquired the scalp and the pipe tomahawk after the battle of Slim Buttes. The pipe tomahawk is not considered to be subject to repatriation under NAGPRA.

On April 3, 1996, at the request of the United States Attorney's Office for the Northern District of California, the Federal Bureau of Investigation, San Francisco, CA, began an investigation into the trafficking of Native American scalps by Butterfield and Butterfield Auction House. On July 19, 1996, Ripley's Entertainment released custody of the scalp to Federal Bureau of Investigation agents. The scalp was sent to the Federal Bureau of Investigation, Laboratory Division, Hair and Fiber Section, Washington, DC, for examination. Based on morphological characteristics, the Federal Bureau of Investigation determined that the hair on the scalp exhibits mongoloid characteristics, a classification that encompasses Native American hair.

Historic records indicate that the battle of Slim Buttes occurred on September 9–10, 1876, when forces led by Captain Anson Mills encountered a village of about 37 Minniconjou lodges. The battle was soon joined by warriors from nearby Sans Arc, Brule, and Cheyenne camps. Lakota oral tradition indicates that all of the tribal participants in the battle of Slim Buttes belonged to the Mnikoju (Minniconjou) and Itazipco (Sans Arc) bands. Descendants of the Mnikoju (Minniconjou) and Itazipco (Sans Arc) bands that participated in the battle of Slim Buttes are included in the present-day Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.

In 1994, representatives of Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and Santee Sioux Tribe of the Santee Reservation of Nebraska signed a memorandum of agreement that authorized representatives of any of the signatory tribes to speak on behalf of all five Indian tribes.

In 2002, a representative of the signatory tribes reviewed the information pertaining to the scalp and concluded that the scalp was a war trophy taken by one of the Mnikoju (Minniconjou) or Itazipco (Sans Arc) warriors from one of their traditional enemies, possibly the Arikara, Pawnee, or Crow. The representative of the signatory tribes identified the scalp as innately sacred. Among the Lakota, scalping is a way of showing contempt for an enemy's prowess in war. The Iwa'kiciwacipi, or scalp dance, was performed to punish the individual from whom the scalp was taken. Another ceremony must be performed after a period of time in order to release the captured spirit of the individual from whom the scalp was taken. The representative of the signatory tribes has requested that the scalp be returned in order to perform the spirit-releasing ceremony. The representative of the signatory tribes also indicated that the signatory tribes do not intend to preclude repatriation of the scalp to any other federally recognized Indian tribe. The signatory tribes will immediately withdraw their request at any time that any federally recognized Indian tribe submits a competing claim to repatriate the scalp.

Officials of the Federal Bureau of Investigation, San Francisco, CA, have determined that, pursuant to 25 U.S.C.

3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Federal Bureau of Investigation, San Francisco, CA, also have determined that, pursuant to 25 U.S.C. 3001 (2), there is insufficient evidence to reasonably trace a shared group identity between the human remains and an Indian tribe. Officials of the Federal Bureau of Investigation, San Francisco, CA, also have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Finally, officials of the Federal Bureau of Investigation, San Francisco, CA, have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and Santee Sioux Tribe of the Santee Reservation of Nebraska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Special Agent Brian J. Guy, Federal Bureau of Investigation, 450 Golden Gate Avenue, San Francisco, CA 94102, telephone (415) 553–7400, before January 9, 2004. Repatriation of the sacred object to the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and Santee Sioux Tribe of the Santee Reservation of Nebraska may proceed after that date if no additional claimants come forward.

The Federal Bureau of Investigation, San Francisco, CA, is responsible for notifying the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Standing Rock Sioux Tribe of North & South Dakota; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: November 5, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–30569 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The two cultural items are one bag of bark fragments and one box of brass kettle fragments.

The cultural items were collected from West Warwick, Kent County, RI, by Dave Straight in 1957 and were donated to the Peabody Museum of Archaeology and Ethnology by the Massachusetts Archaeological Society through Maurice Robbins in the same year. Museum documentation indicates that the cultural items were recovered with human remains, which are not in the possession of the Peabody Museum of Archaeology and Ethnology.

The interment from which the cultural items derive most likely dates to the postcontact period or later (post-A.D. 1500). Copper and brass kettles were European trade items, and therefore support a postcontact temporal context for the burial. In addition, the cultural items were described in museum documentation as ''Narragansett,'' and such a specific attribution suggests that the burial dates to the Historic period. The burial context indicates that the burial was of a Native American. Oral tradition and historical documentation indicate that West Warwick, RI, is within the aboriginal and historic homeland of the Narragansett people during the Contact period. The present-day tribe representing the Narragansett people is the Narragansett Indian Tribe of Rhode Island.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Narragansett Indian Tribe of Rhode Island.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before January 9, 2004. Repatriation of the unassociated funerary objects to the Narragansett Indian Tribe of Rhode Island may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Narragansett Indian Tribe of Rhode Island that this notice has been published.

Dated: October 29, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–30567 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO, and U.S. Department of Agriculture, San Juan National Forest, Durango, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO. The human remains and associated funerary objects were removed from a pithouse on Stollsteimer Mesa, at the junction of the Piedra River and Stollsteimer Creek, Archuleta County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects which museum or Federal agency has control of the human remains and associated funerary objects per 43 CFR 10.2 (a)(3)(ii). Review of the published and unpublished field records and maps associated with the excavation of the site, and review of the land ownership records of San Juan National Forest, indicate that the site is not located on Federal lands that are administered by San Juan National Forest. Therefore, San Juan National Forest does not have control of the human remains and associated funerary objects.

In the **Federal Register** of October 9, 2001, FR Doc. 01–25157, pages 51474 to 51475, the title of the notice and paragraph numbers 1, 5, and 7 are corrected by deleting all reference to U.S. Department of Agriculture, San Juan National Forest, Durango, CO, San Juan National Forest, and to San Juan National Forest, Forest Supervisor.

The title is corrected by substituting the following title: ''Notice of Inventory Completion: University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.''

Paragraph 1 is corrected by substituting the following paragraph:

Notice is here given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO. The human remains and associated funerary objects were removed from a pithouse on Stollsteimer Mesa, at the junction of the Piedra River and Stollsteiner Creek, Archuleta County, CO.

Paragraph 5 is corrected by substituting the following paragraph:

The human remains were found in the jar, which had been placed in a cist in a pithouse on Stollsteimer Mesa, at the junction of the Piedra River and Stollsteimer Creek. The pithouse was on the western side of the mesa, above the river. The site is near the Chimney Rock site (5AA245) which dates to the Pueblo II period (A.D. 800–1125). The research of Jeancon, Roberts, and recent investigators has firmly established that the ceramic/architectural sites in the Piedra River drainage in the vicinity of Chimney Rock are Ancestral Puebloan (Anasazi) in nature and are generally contemporaneous with the occupations at Chimney Rock.

Paragraph 7 is corrected by substituting the following paragraph:

Officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3) (A), the nine objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2) there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any Indian tribe that wishes to comment on the information published in this notice should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, USDA Forest Service, 333 Broadway Boulevard SE, Albuquerque, NM, telephone (505) 842–3238, e-mail fwozniak@fs.fed.us before January 9, 2004.

The U.S. Department of Agriculture, San Juan National Forest is responsible for notifying the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 30, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–30568 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID; and Washington State University, Museum of Anthropology, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects. The human remains are in the control of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID. The associated funerary objects are in the possession of the Washington State University, Museum of Anthropology, Pullman, WA. The human remains and associated funerary objects were removed from the Asotin cemetery site (45–AS–9) in Asotin County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the professional staffs of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology in consultation with representatives of the Nez Perce Tribe of Idaho. A detailed assessment of the associated funerary objects was made by the professional staff of Washington State University, Museum of Anthropology in consultation with representatives of the Confederated Tribes of the Colville Reservation of Washington and Nez Perce Tribe of Idaho.

In 1956, human remains representing a minimum of 25 individuals were removed during archeological excavations at the Asotin cemetery site (45–AS–9). The Asotin cemetery site is located on private property in Asotin County, WA. The excavations were conducted under the direction of Dr. Richard D. Daughtery. No known individuals were identified. The 921 associated funerary items are 1 lot (0.1 g) of wood fragments; 14 stone flakes; 1 chalcedony geode; 2 projectile points; 1 basalt blade; 1 pestle in 2 pieces; 1 basalt scraper; 19 flat shell beads; 175 whole dentalia shell beads; 1 lot (58.4 g) of dentalia shell bead fragments; 1 lot (3.3 g) of olivella shell fragments, 6 shell pendants; 218 elk tooth beads; 1 lot (62.9 g) of red ochre, 11 coffin nails; 105 brass beads; 1 metal bracelet covered with cotton canvas; 4 brass bracelets; 48 buttons; 2 coiled wire necklaces; 1 brass hook and eye set; 1 brass bead necklace; 1 lot (36.4 g) of hawk bell fragments; 1 brass powder horn cap; 1 powder or snuff can; 1 wire spring-like coil; 1 fragment of an ear or finger ring; 1 leather belt (in pieces) with a small brass buckle; 2 small unidentified metal fragments; 285 glass beads; 1 lot (68.6 g) of very small glass beads; 1 round mirror glass; 1 lot (40.0 g) of beadwork on leather backing; 1 crockery marble; 1 complete necklace of glass, olivella, and metal beads; 1 lot (34.6 g) of leather fragments; 1 lot (50.9 g) of fabric fragments; 1 lot (1.2 g) of ribbon fragments; 1 lot (0.1 g) of cotton string; 1 lot (31.9 g) of elk tooth bead fragments; and 4 hackberry seeds.

The human remains were kept at the Alfred W. Bowers Laboratory of Anthropology until 2000 when they were moved to Nez Perce National Historical Park, Spalding, ID. The Alfred W. Bowers Laboratory of Anthropology has maintained control of the human remains. The National Park Service does not have sufficient legal interest to lawfully treat the human remains as part of its collection.

Burial patterns and artifacts found at the site indicate that the burials removed from the Asotin cemetery site were interred between A.D. 1000 and the mid-19th century. Oral tradition and historical evidence indicate that the cemetery was used by two Nez Perce bands that inhabited the villages of Hasotino and Hesweiwewipu. Descendants of the two bands are known to be members of the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho. The Asotin cemetery site is located within the area reserved by the Nez Perce under the Treaty of 1855, but was deleted from tribal lands in the Treaty of 1863. The Indian Claims Commission determined that the area in which the Asotin cemetery site is located was occupied exclusively by the Nez Perce at least since the mid-19th century.

Officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 25 individuals of Native American ancestry. Officials of the Washington State University, Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 921 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology and Washington State University, Museums of Anthropology have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes and the Colville Reservation, Washington and Nez Perce Tribe of Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Leah Evans-Janke, Alfrew W. Bowers Laboratory of Anthropology, University of Idaho, Moscow, ID 83844–1111, telephone (208) 885–3733, before January 9, 2004.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the associated funerary objects should contact Mary Collins, Associate Director, Museum of Anthropology, Washington State University, P.O. Box 62291, Pullman, WA 99164–4910, telephone (509) 335–4314, before January 9, 2004.

Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho may proceed after that date if no additional claimants come forward.

The Museum of Anthropology, Washington State University is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Nez Perce Tribe of Idaho; Alfred W. Bowers Laboratory of Anthropology, University of Idaho; and U.S. Department of Interior, National Park Service, Nez Perce National Historical Park that this notice has been published.

Dated: November 7, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–30566 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–50–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Washington State University, Museum of Anthropology, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the Washington State University, Museum of Anthropology, Pullman, WA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

In 1972, human remains representing a minimum of five individuals were removed from the Asotin cemetery site (45–AS–9), Asotin County, WA, during archeological excavations under the direction of Roderick Sprague of the University of Idaho. The human remains were reburied by the University of Idaho and the Nez Perce Tribe of Idaho shortly after they were excavated. Funerary objects found with the human remains were retained by Dr. Sprague until they were accessioned by the Washington State University, Museum of Anthropology in 1997 and 2000. The 168 unassociated funerary objects are 1 projectile point, 1 stone flake, 1 bear claw, 1 pestle in 2 pieces, 1 lot (0.2 g) of olivella shell bead fragments, 134 dentalia shell beads, 1 lot (2.5 g) of nonhuman bone fragments, 6 whole shell pendants, 11 shell pendant fragments, 1 antler fragment, 1 bone whistle, 1 lot (1.1 g) of bark fragments, 1 lot (324.1 g) of wood fragments, 5 pieces of polished nonhuman bone, 1 lot (18 g) of plant remains, and 1 lot (33.6 g) of matting fragments.

Burial patterns and artifacts found at the site indicate that the burials removed from the Asotin cemetery site originally were interred between A.D. 1000 and the mid–19th century. Oral tradition and historical evidence indicate that the cemetery was used by two Nez Perce bands that inhabited the villages of Hasotino and Hesweiwewipu. Descendants of these two bands are known to be members of the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho. The Asotin cemetery site is located within the area reserved by the Nez Perce under the Treaty of 1855, but was deleted from tribal lands in the Treaty of 1863. The Indian Claims Commission determined that the area in which the Asotin cemetery site is located has been occupied exclusively by the Nez Perce at least since the mid–19th century.

Officials of the Washington State University, Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 168 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Washington State University, Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Mary Collins, Associate Director, Museum of Anthropology, Washington State University, P.O. Box 62291, Pullman, WA 99164–4910, telephone (509) 335–4314, before January 9, 2004. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho may proceed after that date if no additional claimants come forward.

The Washington State University, Museum of Anthropology is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington and Nez Perce Tribe of Idaho that this notice has been published.

Dated: November 5, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–30565 Filed 12–9–03; 8:45 am]

BILLING CODE 4310–50–S

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: December 15, 2003, at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–421–4 (Remedy) (Certain Ductile Iron Waterworks Fittings From China)—briefing and vote. (The Commission is currently scheduled to transmit its recommendations on remedy to the President and the United States Trade Representative on or before December 24, 2003.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: December 8, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–30684 Filed 12–8–03; 10:02 am]

BILLING CODE 7020–02–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sunshine Act Meeting

AGENCY: National Commission on Libraries and Information Science (NCLIS).

ACTION: Notice of meetings.

SUMMARY: The National Commission on Libraries and Information Science is holding an open business meeting to discuss Commission programs and administrative matters. Topics will include:

(1) Introductions;
(2) Administrative matters;
(3) History of NCLIS;
(4) Current activities (*e.g.*, Trust and Terror briefing, Information Literacy initiative, *et al.*);

(5) Relationships with other organizations (*e.g.*, Institute of Museum and Library Services, American Library Association);

(6) NCLIS budget;

(7) NCLIS's future direction.

DATE AND TIME: NCLIS Business Meeting—December 15, 2003, 2 p.m. until 5 p.m. December 16, 2003, 9 a.m. until 4:30 p.m. December 17, 2003, 9 a.m. until 12 noon.

ADDRESS: 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005–3552.

STATUS: Open meeting.

SUPPLEMENTARY INFORMATION: The business meeting is open to the public, subject to space availability. To make special arrangements for physically challenged persons, contact Madeleine McCain, Director of Operations, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *mmccain@nclis.gov,* fax (202) 606–9203 or telephone (202) 606–9200.

SUMMARY: The U.S. National Commission on Libraries and Information Science is also holding a closed meeting to review personnel matters. Closing this meeting is in accordance with the exemption provided under title 45, CFR, part 1703.202(a)(6).

DATE AND TIME: NCLIS Closed Meeting—December 16, 2003, 4:30 p.m.–5 p.m.

ADDRESS: 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005–3552.

STATUS: Closed meeting.

FOR FURTHER INFORMATION CONTACT: Madeleine McCain, Director of Operations, U.S. National Commission on Libraries and Information Science, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *mmccain@nclis.gov* fax (202) 606–9203 or telephone (202) 606 9200.

Dated: December 5, 2003.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 03–30669 Filed 12–5–03; 4:52 pm]

BILLING CODE 7527–$$–P

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meeting (Conference Call)

Time and Date: 12 p.m. e.s.t. January 23, 2004.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC, 20004.

Agency: National Council on Disability (NCD).

Status: All parts of this conference call will be open to the public. Those interested in participating in this conference call should contact the appropriate staff member listed below.

Agenda: Roll call, announcements, reports, new business, adjournment.

Contact Person For More Information: Geraldine Drake Hawkins, Ph.D., Program Analyst, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: December 4, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–30493 Filed 12–9–03; 8:45 am]

BILLING CODE 6820–MA–M

THE NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Technology and Digitization Survey

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of the status of use of technology and digitization activities in the nation's museums and libraries.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 9, 2004.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Send comments to: Barbara Smith, Technology Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 223, Washington, DC 20506. Ms. Smith can be reached on Telephone: 202–606–5254 Fax: 202–606–0395 or by e-mail at *bsmith@imls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. The Museum and Library Services Act of 2003 includes a strong emphasis on supporting library services through the use of technology and on assisting museums in their educational role and in modernizing their methods and facilities. This solicitation is to develop plans to collect information to assist IMLS in understanding the current status and capacity of museums and libraries to participate in national networks to deliver educational resources to students, life-long learners, underserved populations, and the general public.

II. Current Actions

The core duties of the Institute of Museum and Library Services, as stated in its strategic plan, are to promote excellence in library services and to promote access to museum and library

services for a diverse public. This goal will be accomplished in part by promoting access to learning and information resources held by museums and libraries through electronic linkages. IMLS is seeking assistance in developing specific plans to collect information from the US library and museum communities to assess the digitization readiness and capacity of libraries and the technological readiness and capacity of museums. These information collections will be developed based on the varying characteristics of each community. A great deal of information has been collected on the internet access of libraries for internal and public access. The information IMLS collects should build on but not duplicate existing or ongoing collections.

Agency: Institute of Museum and Library Services.

Title: Technology and Digitization Survey.

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums, libraries and archives.

Number of Respondents: 2000.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 2000.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Director of the Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–2478.

Dated: December 2, 2003.

Rebecca Danvers,

Director, Office of Research and Technology.

[FR Doc. 03–30554 Filed 12–9–03; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237, 50–249]

Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3; Notice of Availability of Draft Supplement 17 to Generic Environmental Impact Statement and Public Meeting for the License Renewal of Dresden Nuclear Power Station, Units 2 and 3

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–19 and DPR–25 for an additional 20 years of operation at Dresden Nuclear Power Station (DNPS). DNPS is located in Grundy County, Illinois, approximately 8 miles east of Morris, Illinois. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available for public inspection in the NRC's Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or, electronically, from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the NRC's Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.* In addition, the Morris Area Public Library, located at 604 West Liberty Street, Morris, Illinois; and the Coal City Public Library District, located at 85 North Garfield Street, Coal City, Illinois, have agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by February 24, 2004. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *DresdenEIS@nrc.gov.* All comments received by the Commission, including those made by Federal, State, and local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and from the PARS component of ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on January 14, 2004, at Jennifer's Garden Banquet and Convention Center located at 555 West Gore Road, Morris, Illinois. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Louis L. Wheeler by telephone at 1–800–368–5642, extension 1444, or by e-mail at *dxw@nrc.gov* no later than January 8, 2004. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Wheeler's attention no later than January 8, 2004, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. Louis L. Wheeler, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Mail Stop: O–11F1, Washington, DC 20555–0001. Mr. Wheeler may be contacted at the aforementioned telephone number or e-mail address.

Dated in Rockville, Maryland, this 2nd day of December, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30589 Filed 12–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–160]

Georgia Institute of Technology, Georgia Institute of Technology Research Reactor; Notice of Approval of Decommissioning Plan and Notice of License Termination

The U.S. Nuclear Regulatory Commission (NRC) is noticing the approval of the decommissioning plan for the Georgia Institute of Technology (GT or the licensee) GT Research Reactor (GTRR) and is also noticing the termination of Facility Operating License No. R–97 for the GTRR.

The NRC has terminated the license of the decommissioned GTRR, which was in the Neely Nuclear Research Center in the north-central part of the GT campus in the city of Atlanta, Georgia, and has released the site for unrestricted use. The licensee requested termination of the license in a letter to NRC dated June 14, 2002. The GTRR was a 5 MW thermal, heavy-water-moderated, -cooled, and -reflected reactor that was fueled with uranium aluminum alloy plates. It was licensed and first operated in 1964 and had a licensed thermal power level of 1 MW, which was upgraded to 5000 kW thermal in 1974. The reactor was permanently shut down on November 17, 1995. The licensee submitted a decommissioning plan to NRC for review and approval in letters dated July 1, 1998, and February 8 and May 28, 1999. The decommissioning plan was approved by License Amendment No. 14 issued on July 22, 1999.

A ''Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action To Decommission Georgia Institute of Technology Georgia Tech Research Reactor'' appeared in the **Federal Register** on February 1, 1999 (64 FR 4902). All comments received were considered by the staff during the review of the GTRR Decommissioning Plan.

The NRC completed its review of the GTRR Final Status Survey Report dated June 2002, which was submitted by the licensee to NRC by letter dated June 14, 2002. The report documented the level of residual radioactivity remaining at the facility and stated that compliance with the criteria as approved in the NRC-approved decommissioning plan had been demonstrated.

Pursuant to 10 CFR 50.82(b)(6), the NRC staff has concluded that the decommissioning has been performed in accordance with the approved decommissioning plan and that the terminal radiation survey and associated documentation demonstrate that the facility and site are suitable for release in accordance with the criteria in the NRC-approved decommissioning plan. Further, on the basis of the decommissioning activities conducted by GT, the NRC's review of the licensee's final status survey report, the results of NRC inspections conducted at the GTRR, and the results of NRC confirmatory surveys, the NRC has concluded that the decommissioning process is complete and the facility and site are suitable to be released for unrestricted use. Based on the NRC staff's conclusions, Facility Operating License No. R–97 is terminated.

For further details see the licensee's application for decommissioning dated July 1, 1998, and February 8 and May 28, 1999; the July 22, 1999, License Amendment No. 14 to Facility Operating License No. R–97; the licensee's request for license termination dated June 14, 2002; the GTRR Final Status Survey Report dated June 2002, which was submitted to NRC by letter dated June 14, 2002; and NRC Inspection Report No. 50–160/2002–20, dated June 24, 2003, and corrected July 17, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records for GT dated after January 30, 2000, will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should call the NRC PDR reference staff at 1–800–397–4209 or 301–415–4737 or e-mail *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 2nd day of December, 2003.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30588 Filed 12–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Units 1 and 2; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR–58 and DPR–74 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Operating License Nos. DPR–58 and DPR–74, which authorize the Indiana Michigan Power Company to operate D. C. Cook Nuclear Plant, at 3304 megawatts thermal for Unit 1 and at 3468 megawatts thermal for Unit 2, respectively. The renewed licenses would authorize the applicant to operate D. C. Cook Nuclear Plant, Units 1 and 2, for an additional 20-years beyond the period specified in the current licenses. The current operating licenses for D. C. Cook Nuclear Plant, Units 1 and 2, expire on October 25, 2014 and December 23, 2017, respectively.

On November 3, 2003, the Commission's staff received an application from Indiana Michigan Power Company, filed pursuant to 10 CFR Part 54, to renew the Operating License Nos. DPR–58 and DPR–74 for D. C. Cook Nuclear Plant, Units 1 and 2, respectively. A Notice of Receipt and Availability of the license renewal application, ''Indiana Michigan Power Company, D. C. Cook Nuclear Plant, Units 1 and 2; Notice of Receipt and Availability of Application for Renewal of Facility Operating License Nos. DPR–58 and DPR–74 for an Additional 20-Year Period,'' was published in the **Federal Register** on November 10, 2003 (68 FR 63824).

The Commission's staff has determined that the Indiana Michigan Power Company has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is acceptable for docketing. The current Docket Nos. 50–

315 and 50–316 for Operating License Nos. DPR–58 and DPR–74, respectively, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

As discussed further herein, in the event that a hearing is held, issues that may be litigating will be confined to those pertinent to the foregoing.

Within 30 days from the date of publication of this *Federal Notice,* the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licenses in accordance with the provisions of 10 CFR 2.714. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor) Rockville, Maryland, and on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board (ASLB) designated by the Commission or by the Chairman of the ASLB Panel will rule on the request(s) and/or petition(s), and the Secretary or the designated ASLB will issue a notice of hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed by the above date, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the licenses without further notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the board up to 15 days before the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days before the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or it may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and the petition for leave to intervene should also be sent to the Office of the General Counsel, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Again, because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission at 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Mano K. Nazar, Senior Vice President and Chief Nuclear Officer, Indiana Michigan Power Company, Nuclear Generation Group, One Cook Place, Bridgman, MI 49106.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for a hearing will not be entertained

absent a determination by the Commission, the presiding officer, or the ASLB that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v), and 2.714(d).

Detailed information about the license renewal process can be found under the Nuclear Reactors icon on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal.html.* A copy of the application to renew the operating licenses for D. C. Cook Nuclear Plant, Units 1 and 2, is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738, and on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html* while the application is under review. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents, and a copy of the application is also available electronically through the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/reading-rm/adams.html under ADAMS accession number ML033070179. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The staff has verified that the license renewal application has been provided to the Bridgman Public Library, 4460 Lake Street, Bridgman, Michigan and the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan, which are near the D. C. Cook Nuclear Plant.

Dated at Rockville, Maryland, this the 4th day of December, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30687 Filed 12–9–03; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 8, 15, 22, 29, 2003, January 5, 12, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of December 8, 2003

Tuesday, December 9, 2003

1:25 p.m. Affirmation session (public meeting) (if needed).

1:30 p.m. Briefing on Equal Employment Opportunity Program, (public meeting) (contact: Corenthis Kelley, 301–415–7380.

Wednesday, December 10, 2003

9:30 a.m. Briefing on Strategic Workforce Planning and Human Capital Initiatives (closed—ex. 2).

Week of December 15, 2003—Tentative

Tuesday, December 16, 2003

9:30 a.m. Discussion of Security Issues (closed—ex. 1).

Week of December 22, 2003—Tentative

There are no meetings scheduled for the week of December 22, 2003.

Week of December 29, 2003—Tentative

There are no meetings scheduled for the week of December 29, 2003.

Week of January 5, 2004—Tentative

There are no meetings scheduled for the week of January 5, 2004.

Week of January 12, 2004—Tentative

Wednesday, January 14, 2004

9:30 a.m. Briefing on status of Office of Chief Information Officer programs, performance, and plans (public meeting).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: December 4, 2003.

R. Michelle Schroll,

Information Management Specialist, Office of the Secretary.

[FR Doc. 03–30683 Filed 12–8–03; 10:02 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act, Meetings; Public Hearing

TIME AND DATE: 2 PM Tuesday, December 30, 2003.

PLACE: Office of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC

STATUS: Hearing OPEN to the Public at 2 PM.

PURPOSE: Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any persons to present views regarding the activities of the Corporation.

Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporation Secretary no later than 5 p.m., Monday, December 29, 2003. The notice must include the indiviudal's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individuals presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit written statement for the record must submit a copy of such statements to OPIC's Corporate Secretary no later than 5 p.m., Monday, December 29, 2003. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporation Secretary, at the cost of reproduction.

FOR FURTHER INFORMATION CONTACT: Information on the hearing may be

obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov.*

Dated: December 8, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–30744 Filed 12–8–03; 3:43 pm]

BILLING CODE 3210–01–M

POSTAL RATE COMMISSION

Sunshine Act Meetings

AGENCY: Postal Rate Commission.

TIME AND DATE: Monday, December 8, 2003 through December 11, as needed, during Commission business hours (8 a.m. to 4:30 p.m.).

PLACE: Commission conference room, 1333 H Street, NW., suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel and compensation matters.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, (202) 789–6820.

Dated: December 8, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03–30730 Filed 12–8–03; 2:41 pm]

BILLING CODE 7710–FW–M

POSTAL RATE COMMISSION

[Order No. 1387; Docket No. A2003–1]

Dismissal of Appeal of Post Office Closing in Birmingham Green, AL

AGENCY: Postal Rate Commission.

ACTION: Order.

SUMMARY: The Commission is dismissing an appeal (brought by George Prince *et al.*, petitioners) of the closing of a Birmingham Green, Alabama 35237 postal facility. The reason for dismissal is lack of jurisdiction. This facility is a classified postal station, rather than a post office. Controlling precedent holds that the Commission does not have jurisdiction over a closing or consolidation of a postal station.

ADDRESSES: Submit correspondence concerning this matter via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

68 FR 56350 (September 30, 2003).

Introduction and Summary

On September 17, 2003, three individuals petitioned the Commission to review the Postal Service's actions regarding the Birmingham Green, Alabama Post Office.[1] The Commission gave notice and accepted the appeal in order no. 1384, issued on September 23, 2003.[2] The Postal Service subsequently moved to dismiss this proceeding, arguing that the Commission lacks jurisdiction to consider an appeal under 39 U.S.C. 404(b).[3] After considering the circumstances of this appeal in light of applicable law and precedent in earlier dockets, the Commission has concluded that this proceeding should be dismissed for lack of jurisdiction.

Petitioners' Request for Review

Petitioners George Prince, Terry Finch, and James E. Roberts contest a Postal Service action—which they characterize as a ''closing or consolidation''—affecting the Birmingham Green post office, located at 317 North 20th Street in Birmingham, Alabama 35237. Joint Petition at 1. Petitioners document the Postal Service action in two attachments to their pleading.

The first attachment is a letter dated August 27, 2003 and signed by Paul T. Barrett, postmaster of Birmingham. In the letter, Mr. Barrett advises postal customers that ''the Birmingham Green Post Office will be officially closed September 12, 2003.'' In light of this development, he states that customers will be required to change their post office boxes, and that mail will be forwarded in accordance with postal regulations. He further states that ''[r]etail services from the Main Post Office will ensure effective and regular services to the Downtown Birmingham community.''

The second attachment is a document entitled ''Proposal to Consolidate the Birmingham Green Station and Establish a Contract Postal Unit,'' dated June 20, 2003. According to the document's cover page, the matter was assigned docket number 35237.

The document states at the outset that the Postal Service ''is proposing to consolidate the Birmingham Green Station and provide retail services by establishing a contract postal unit (CPU) under the administrative responsibility of the Main Post Office, located 4 blocks away.'' Proposal to Consolidate at 1. The remainder of the document consists of assessments of the proposal's anticipated effects, under headings entitled ''Responsiveness to Community Postal Needs,'' ''Effect on Community,'' ''Effect on Employees,'' ''Economic Savings,'' and ''Other Factors.'' These areas of inquiry correspond to the criteria the Postal Service is directed to consider in making a statutory determination to close or consolidate a post office, pursuant to 39 U.S.C. 404(b)(2).

Petitioners assert that the Postal Service's determination to close the Birmingham Green facility, announced in a notice of final determination on August 27, 2003 violates the requirement in 39 CFR 241.3(a)(2)(iii) that such determinations be available in writing at least 60 days before discontinuance takes effect. On this basis, petitioners argue that the process was ''without observance of procedure required by law,'' in contravention of 39 U.S.C. 404(b)(5)(B). Joint Petition at 1.

Petitioners also challenge the merits of the Service's decision. They allege that it will have adverse effects on the community served by the Birmingham Green facility and will degrade the degree of service provided; that the Service failed to take into account all the disadvantages of closing the facility; that the Service provided no statement of the facility's income or revenue in its proposal; and that it did not adequately respond to the concerns raised by community members in both questionnaire responses and in a public hearing. Id. at 1–2.

Postal Service Motion To Dismiss

Order no. 1384 established October 3, 2003 as the date for the Postal Service's filing of its administrative record in this appeal. On that date, rather than filing an administrative record, the Service submitted a motion to dismiss this proceeding.[4]

In it motion, the Postal Service submits that the petition does not fall within the Commission's jurisdiction under § 404(b)(5). The Service cites two bases for this conclusion. First, it asserts that the Birmingham Green facility is a classified postal station—one of at least four USPS-operated facilities in downtown Birmingham—and thus is not a post office. Second, the Service represents that operations at the Birmingham Green facility ''are currently suspended rather than

[1] Joint Petition for Review and Application for Suspension, September 17, 2003.

[2] Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5), September 23, 2003.

[3] United States Postal Service Motion to Dismiss Proceeding, October 3, 2003.

[4] Id.

formally closed[,]'' [5] and that it has been working with Birmingham customers on providing them services, with the expectation that a contract station will be established in the vicinity of the Birmingham Green station.

The Postal Service musters an extensive review of legislative history and case law to support its position ''that the procedures mandated by § 404(b) apply only to the closing or consolidation of an independent post office, which is a facility occupied and immediately supervised by a postmaster, and not the closing or consolidation of a station, branch, contract unit, or other subordinate facility under the administrative supervision of a post office.'' [6] The Service argues at length that Congress, in enacting § 404(b), intended to limit the term ''post office'' to a definition predating the Reorganization Act that distinguishes between independent post offices and their subordinate retail facilities such as stations and branches.[7] The Service also cites judicial authority in support of the restrictive interpretation of ''post office'' it urges.[8] Most notably, it invokes the decision in *Shepard Community Association* v. *United States Postal Service*,[9] in which a United States District Court found convincing indications of Congressional intent to distinguish post offices from branches and stations for purposes of applying § 404(b), and accordingly ruled that § 404(b) did not apply to the contested closing of the Shepard station in Columbus, Ohio.

Analysis of Jurisdictional Applicability

The available documentary evidence concerning the Birmingham Green facility, and the nature of the Postal Service's actions affecting it, are somewhat opaque. The Service asks the Commission to infer that operations at the facility have been ''suspended,'' based on the absence of a formal announcement of its closure in the Postal Bulletin.[10] However, Postmaster Barrett's letter of August 27, 2003, publicly discloses an official intention to close the facility, with post office boxes and other services to be provided at the Main Post Office.

At the same time, his apparently contemporaneous administrative responsibility for the Birmingham Green facility implies that its closure would not constitute a statutory ''consolidation,'' which has been found to have ''the characteristic of subordinating the day to day overall management of one office having a postmaster to the administrative personnel of another office.'' [11] If Postmaster Barrett already had administrative responsibility for the Birmingham Green facility, closing it would not appear to constitute a ''consolidation'' subject to review under § 404(b). Yet, apparently two months earlier, the Postal Service at some administrative level had prepared an analysis on the ''Proposal to Consolidate the Birmingham Green Station and Establish a Contract Postal Unit,'' which petitioners have provided as an attachment to their appeal.

Notwithstanding these unclear circumstances, the Commission finds that the available facts support a conclusion that the Postal Service's actions regarding the Birmingham Green facility—whether considered as a ''closing'' or a ''suspension''—affect a ''station or branch'' within the service area administered by the Birmingham post office, and thus do not fall within the ambit of the review process provided in 39 U.S.C. 404(b).

The Commission's action in an earlier proceeding, docket no. A82–10, provides useful guidance in this controversy. In that docket, petitioners contested the Postal Service's plan to close the Oceana Station in Virginia Beach, Virginia. In its dispositive order,[12] the Commission considered legal arguments on what it regarded as a threshold issue: whether § 404(b) procedures for closing or consolidating post offices were applicable to the Service's plan to close the Oceana Station.

In deliberating on this issue, the Commission held that the Postal Service decision to close the facility ''must be considered within the context of the Postal Service's other actions in the area.''[13] After examining the facts presented, the Commission found the proposed closing of the Oceana Station to be one component of a plan to reconfigure the network of postal facilities providing services to various communities in the Virginia Beach area. Employing a ''rule of reason,'' the Commission held that ''the requirements of section 404(b) do not pertain to the specific building housing the post office; but rather are concerned with the provision of a facility within the community.'' [14] In light of the Service's description of its actions in the Virginia Beach area, the Commission concluded ''that the Postal Service is merely rearranging the retail facilities in the community[,]'' [15] and that the formal requirements of § 404(b) were not intended to apply to such changes. More broadly, the Commission stated that ''the Postal Service is not required to follow the formal § 404(b) procedure when it is merely rearranging its retail facilities in a community, as it is doing in Virginia Beach.'' [16]

Here, as in docket no. A82–10, the Postal Service's action affects one classified station of several in a metropolitan area: in this instance, Birmingham, Alabama.[17] The Postal Service represents that equal or superior service is available at the Birmingham Main post office, less than one-half mile away, but that it is also working to establish a contract station in the vicinity of the Birmingham Green station.[18] These activities indicate that the Service's action with regard to the Birmingham Green station is part of a rearrangement of the retail network serving the Birmingham community, as with the Virginia Beach area in docket no. A82–10. For this reason, the Commission concludes that the procedural requirements of § 404(b) do not apply, and that the appeal of the Postal Service's action regarding the Birmingham Green station does not fall within the Commission's jurisdiction under that section.[19] Therefore, the Postal Service's motion to dismiss this proceeding shall be granted.

The joint petition for review was accompanied by an application for suspension of the Postal Service's action regarding the Birmingham Green station. Inasmuch as the Commission has found § 404(b) inapplicable to the Service's action, the motion for suspension must also be denied.

Ordering Paragraphs The Commission orders:

(a) The United States Postal Service Motion to Dismiss Proceeding, filed October 3, 2003, is granted.

(b) Petitioners' Application for Suspension, filed September 17, 2003, is denied.

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[5] Id. at 1. (Footnote omitted.)

[6] Id. at 2.

[7] Id. at 3–9.

[8] Id. at 9–14.

[9] *Shepard Community Association* v. *United States Postal Service,* Civ. No. C2–82–425 (S.D. Ohio 1985).

[10] Postal Service Motion to Dismiss, supra, at 1, n. 4.

[11] *Knapp* v. *United States Postal Service,* 449 F. Supp. 158, 162 (C.D. Cal. 1978).

[12] Order No. 436, Order Dismissing Docket No. A82–10, June 25, 1982.

[13] Id. at 7.

[14] Id. at 6–7.

[15] Id. at 8.

[16] Id. at 1.

[17] Id., Attachment No.1, p. 3–7.

[18] Postal Service Motion to Dismiss, supra, at 1–2.

[19] The Commission views this outcome as compatible with, if not in every respect identical to, the court's analysis in the *Shepard* decision, supra.

(c) The Secretary of the Postal Rate Commission shall publish this order in the **Federal Register**.

By the Commission.

Issued December 3, 2003.

Dated: December 4, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03–30612 Filed 12–9–03; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26284; 812–12898]

AIP Alternative Strategies Funds, et al.; Notice of Application

December 4, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: AIP Alternative Strategies Funds (''AIS'') and Alternative Investment Partners LLC (''Manager'').

FILING DATES: The application was filed on October 22, 2002, and amended on November 14, 2003, and December 4, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 29, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Thomas R. Westle, Esq., Blank Rome LLP, 405 Lexington Avenue, 24th Floor, New York, NY 10174.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 942–7927, or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. AIS is a Delaware business trust registered under the Act as an open-end management investment company. AIS is organized as a series investment company and has one series, Alpha Strategies I (''Alpha Strategies'').[1] The Manager is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to Alpha Strategies pursuant to an investment advisory agreement (''Investment Advisory Agreement''). The Investment Advisory Agreement has been approved by AIS' board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of AIS (''Independent Trustees''), as well as by Alpha Strategies' shareholders.

2. Under the terms of the Investment Advisory Agreement, the Manager provides investment advisory services to Alpha Strategies, supervises the investment program for Alpha Strategies, and has the authority, subject to Board approval, to enter into separate investment sub-advisory agreements (''Sub-Advisory Agreements'') with one or more sub-advisers (''Sub-Advisers''). The Manager monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, retention or termination.[2] Sub-Advisers recommended to the Board by the Manager are selected and approved by the Board, including a majority of the Independent Trustees. Each Sub-Adviser would have discretionary authority to invest the portion of a Series' assets assigned to it. The Manager compensates each Sub-Adviser out of the fees paid to the Manager under the Investment Advisory Agreement.

3. Applicants request an order to permit the Manager, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to the Research Consultant or to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of AIS or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Series (''Affiliated Sub-Adviser'').

4. Applicants also request an exemption from the various disclosure provisions described below that may require a Series to disclose fees paid by the Manager to each Sub-Adviser. An exemption is requested to permit each Series to disclose (as both a dollar amount and as a percentage of each Series' net assets): (a) the aggregate fees paid to the Manager and Affiliated Sub-Advisers; and (b) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (''Aggregate Fee Disclosure''). For any Series that employs an Affiliated Sub-Adviser, the Series will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser. Each Series also will provide separate disclosure of any fees paid to the Research Consultant.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

[1] The Applicants request that any relief granted pursuant to the application also apply to any future series of AIS and any other registered open-end management investment companies and their series that (a) Are advised by the Manager or any entity controlling, controlled by, or under common control with the Manager; (b) use the manager/sub-adviser structure described in the application; and (c) comply with the terms and conditions in the application (each, a ''Series,'' and together with Alpha Strategies, the ''Series''). AIS is the only existing registered investment company that currently intends to rely on the order. If the name of any Series contains the name of a Sub-Adviser (as defined below), the name of the Manager will appear before the name of the Sub-Adviser.

[2] The Manager's recommendations are based, in part, on research provided by Trust Advisors, LLC (the ''Research Consultant''), an investment adviser registered under the Advisers Act and an affiliated person of the Manager. Pursuant to an agreement entered into between the Research Consultant, the Manager, and AIS, on behalf of Alpha Strategies (''Research Consultant Agreement''), the Research Consultant provides the Manager with research and information on Sub-Advisers, and receives a fee from the Manager out of the fees paid by the Series to the Manager.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders are relying on the Manager's experience to select one or more Sub-Advisers best suited to achieve a Series' investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Series, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Investment Advisory Agreement, the Research Consultant Agreement, and any Sub-Advisory Agreement with an Affiliated Sub-Adviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that some Sub-Advisers use a ''posted'' rate schedule to set their fees. Applicants state that while Sub-Advisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Sub-Advisers to negotiate lower sub-advisory fees with the Manager, the benefits of which are passed on to Series shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before any Series may rely on the requested order, the operation of the Series in the manner described in the application will be approved by a majority of the outstanding voting securities of the Series, as defined in the Act, or, in the case of a Series whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering shares of the Series to the public.

2. Each Series will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Series will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Manager has the ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Sub-Adviser, shareholders of the relevant Series will be furnished all information about the Sub-Adviser that would be contained in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Sub-Adviser. The Manager will meet this condition by providing shareholders, within 90 days of the hiring of a Sub-Adviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified to permit Aggregate Fee Disclosure.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

5. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

6. When a Sub-Adviser change is proposed for a Series with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board's minutes, that the change is in the best interests of the Series and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the Independent Trustees.

8. The Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability on a per-Series basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

9. Whenever a Sub-Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the Manager's profitability.

10. The Manager will provide general management services to each Series, including overall supervisory responsibility for the general management and investment of each Series' portfolio securities, and, subject to review and approval by the Board, will: (a) Set each Series' overall investment strategies, (b) evaluate, select and recommend Sub-Advisers to manage all or a part of a Series' assets, (c) allocate and, when appropriate, reallocate a Series' assets among multiple Sub-Advisers; (d) monitor and evaluate the performance of Sub-Advisers, and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the relevant

Series' investment objective, policies and restrictions.

11. No trustee or officer of a Series, or member or officer of the Manager will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such person), any interest in a Sub-Adviser, except for: (a) ownership of interest in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

12. Each Series will disclose in its registration statement the Aggregate Fee Disclosure.

13. The requested order will expire on the effective date of rule 15a–5 under the Investment Company Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30577 Filed 12–9–03; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Modifications to the Disability Determination Procedures; Extension of Testing of Some Disability Redesign Features

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the extension of tests involving modifications to the disability determination procedures.

SUMMARY: We are announcing the extension of tests involving modifications to our disability determination procedures that we are conducting under the authority of current rules codified at 20 CFR 404.906 and 416.1406. These rules provide authority to test several modifications to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and for supplemental security income payments based on disability under title XVI of the Act. On September 25, 2003, we announced an approach to improve the disability determination process. We have decided to extend the testing of two redesign features of the disability prototype for 21 months to ensure a smooth transition while these changes to the disability determination process are being developed.

DATES: We are extending our selection of cases to be included in these tests from December 31, 2003 until no later than September 30, 2005. If we decide to continue selection of cases for these tests beyond this date, we will publish another notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Phil Landis, Disability Process Redesign Staff, Office of Disability Determinations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, 410–965–5388.

SUPPLEMENTARY INFORMATION: Current regulations at 20 CFR 404.906 and 416.1406 authorize us to test, individually, or in any combination, different modifications to the disability determination procedures. We have conducted several tests under the authority of these rules, including a prototype that incorporates a number of modifications to the disability determination procedures that the State agencies use. The prototype included three redesign features, and we previously extended the tests of two of those features: the use of a single decisionmaker, in which a disability examiner may make the initial disability determination in most cases without requiring the signature of a medical consultant; and elimination of the reconsideration level of review. We are now announcing a further extension of the testing of these two features.

We also have conducted another test involving the use of a single decisionmaker who may make the initial disability determination in most cases without requiring the signature of a medical consultant. We are also extending the period during which we will select cases to be included in this test of the single decisionmaker feature.

Extension of Testing of Some Disability Redesign Features

On August 30, 1999, we published in the **Federal Register** a notice announcing a prototype that would test a new disability claims process in 10 States, also called the prototype process (64 FR 47218). On December 23, 1999, we published a notice in the **Federal Register** (65 FR 72134) extending the period during which we would select cases to be included in a separate test of the single decisionmaker feature. In these notices, we stated that selection of cases was expected to be concluded on or about December 31, 2001. We also stated that, if we decided to continue the tests beyond that date, we would publish another notice in the **Federal Register**. We subsequently published notices in the **Federal Register** extending selection of cases for these tests. Most recently, on June 30, 2003, we published a notice extending selection of cases for the tests until no later than December 31, 2003 (68 FR 38737). We also stated that, if we decided to continue selection of cases for these tests beyond that date, we would publish another notice in the **Federal Register**. We have decided to extend selection of cases for two features of the prototype process (single decisionmaker and elimination of the reconsideration step), and the separate test of single decisionmaker beyond December 31, 2003. We expect that our selection of cases for these tests will end on or before September 30, 2005.

This extension also applies to the locations in the State of New York that we added to the prototype test in a notice published in the **Federal Register** on December 26, 2000 (65 FR 81553).

Dated: December 1, 2003.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. 03–30595 Filed 12–9–03; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S and T of the Statement of the Organization, Functions and Delegations of Authority that covers the Social Security Administration (SSA). This notice establishes a new Human Capital Planning Staff at the Deputy Commissioner for Human Resources level. It deletes language from the Office of Workforce Analysis in the Office of the Chief Strategic Officer and adds that language to the **Federal Register** material for the Human Capital Planning Staff. It establishes the Executive and Special Services Staff as a separate Deputy Commissioner for Human Resources' organization. It also retitles and redescribes the functions of two Staffs in the Office of Personnel, *i.e.*, the Project Management Staff (S7BH) and the Personnel Management Information Systems and Payroll Staff (S7BJ). It revises the **Federal Register** language for the Center for Personnel Policy and Staffing and, in addition, it establishes the Center for Employee Benefits in the Office of Personnel. It creates three centers in the Office of Training and three centers in the Office of Civil Rights and Equal Opportunity. It also

amends the Office of the Strategic Officer subchapter to add the SAC Code ''TJ'' and to delete a function from that subchapter. The new material and changes are as follows:

Chapter S7

Office of the Deputy Commissioner, Human Resources

Section S7.00 *The Office of the Deputy Commissioner, Human Resources*—(Mission):

Add after the colon and before the words ''personnel management'', ''human capital and planning initiatives''.

Add the word ''and'' between the words ''opportunity'' and ''training''.

Section S7.10 *The Office of the Deputy Commissioner, Human Resources*—(Organization):

The Office of the Deputy Commissioner, Human Resources, under the leadership of the Deputy Commissioner, Human Resources, includes:

Reletter:
D. to F.
E. to G.
F. to H.
G. to I.
Establish:
D. The Human Capital Planning Staff (S7J).
E. The Executive and Special Services Staff (S7K).

Section S7.20 *The Office of the Deputy Commissioner, Human Resources*—(Functions):

Delete: From C, the Immediate Office of the Deputy Commissioner, paragraphs 2, 3, 4 and 5.

Reletter:
D. to F.
E. to G.
F. to H.
G. to I.
Add:

D. The Human Capital Planning Staff (S7J) provides leadership within DCHR and for the Agency in broad human resources policy areas related to workforce planning and management. The Staff ensures that the Agency's human resources policies and practices are aligned to support the accomplishment of the Agency's mission, vision, goals and strategies; improve hiring and retention strategies to ensure a workforce consistent with the Agency's needs; and create a continuous learning and performance culture that results in a highly productive workforce. The Human Capital Planning Staff provides direction and oversight to the development and integration of the Agency's human resources automated systems and advises the DCHR on matters pertaining to Government-wide automated human resources systems. The Staff continually monitors, analyzes and interprets workforce forecasting data and projects future workforce needs including the types of skills and positions needed. It also develops and implements Agency-wide initiatives, such as competitive sourcing, in support of the effective use of human capital.

E. The Executive and Special Services Staff (S7K) develops and implements all SSA policies and activities relating to the Agency's executive level personnel management program. Recruits for and places individuals in positions in the Senior Executive Service (SES) in accordance with OPM regulations. Provides staff support to the Executive Resources Board in administering a systematic program to manage SSA's executive and professional resources and ensuring the appropriate selection of candidates to participate in official executive development programs. Provides staff support to the Performance Review Board in reviewing performance plans and subsequent appraisals of career and non-career executives in SES and employees in equivalent level positions.

F. *Office of Personnel.* Delete from the sentence that reads: ''The Office manages personnel programs in the following areas:'' the ''and'' after ''employee recognition'' and before ''health services''.

Add to that sentence: ''employee benefits including health and retirement.''

Add as the last sentence in F:

''The office also develops and implements an SSA-wide program of Personnel Security and Suitability for employees and contractors and administers the SSA Drug Free Workplace program. It directs the development and operation of SSA's Workers' Compensation program, including SSA's Workers' Compensation Return to Work, Controversion and Investigations programs.''

Subchapter S7B

The Office of Personnel

Section S7B.00 *The Office of Personnel*—(Mission):

Add, after the first sentence, ''It administers and provides counseling for retirement, health and other employee benefits programs.''

Add, beginning as the third sentence:

''The Office of Personnel also develops and implements an SSA-wide program of Personnel Security and Suitability for employees and contractors and administers the SSA Drug Free Workplace program. It directs the development and operation of SSA's Workers' Compensation program, including SSA's Workers' Compensation Return to Work, Controversion and Investigations programs.''

Section S7B.10 *The Office of Personnel*—(Organization):

The Office of Personnel under the Associate Commissioner, Office of Personnel, includes:

Reletter:
D. to E.
E. to F.
F. to G.
G. to H.
H. to I.
Establish:
D. The Center for Employee Benefits (S7BL).

Retitle E: The Project Management Staff (S7BH) to the Center for Personnel Security and Project Management (S7BH).

Retitle F: The Personnel Management Information Systems and Payroll Staff (S7BJ) to the Center for Personnel Management Information Systems and Payroll (S7BJ).

Section S7B.20 *The Office of Personnel*—(Functions):

Reletter:
D. to E.
E. to F.
F. to G.
G. to H.
H. to I.
Add:

D. The Center for Employee Benefits (S7BL) directs the Social Security Administration's Retirement and Health Benefits programs. The Center develops the agency's policy on these programs and provides interpretation and guidance to SSA's managers nation-wide. Expertise is provided to managers and employees on all Federal Benefit's Programs, including the Civil Service and Federal Employees' Retirement Systems, Thrift Savings Plan, Federal Employees' Health Benefit Plans, Federal Employees' Group Life Insurance, Flexible Spending Accounts and Long Term Care.

Retitle E, the Project Management Staff (S7BH) to the Center for Personnel Security and Project Management (S7BH).

Replace E in its entirety as follows:

1. Develops and implements an SSA-wide program of Personnel Security and Suitability for employees and contractors. Develops and implements SSA's National Security Program.

2. Directs the development and operation of SSA's Workers'

Compensation program. Provides assistance to employees regarding claims for lost wages, settlement awards, notices of injury and required medical reports.

3. Provides assistance to employees regarding claims for lost wages, settlement awards, notices of injury and required medical reports.

4. Directs the development and operation of SSA's Workers' Compensation Return to Work, Controversion and Investigations programs.

5. Designs national policies for the SSA Drug Free Workplace program. Develops, implements and manages the day-to-day operation of SSA's drug testing program.

6. Conducts administrative surveys, special studies and projects of SSA-wide significance.

Retitle F, the Personnel Management Information Systems and Payroll Staff (S7BJ), to the Center for Personnel Management Information Systems and Payroll (S7BJ).

Delete from F, paragraph #1, in the first sentence, the words ''record keeping''.

Delete the remainder of F, after paragraph #2, in its entirety. Add the following:

3. Designs business applications and administrative systems in the personnel arena, including workload management, action tracking and other management support systems. Manages the entire applications development process, including assessing user needs, developing system pilots, designing systems, testing systems, administering databases, training users, and evaluating overall system performance.

4. Evaluates, tests, installs and maintains agency applications software within the networking environment for compatibility with existing software, hardware and networks and serves as point of contact for equipment, software and operational problems and needs within OPE. Ensures the integrity of the LAN, as well as the completion of LAN operations.

5. Develops and provides guidance to SSA's managers, timekeepers and employees on the payroll and time and attendance processes throughout SSA. Is the first point of contact in headquarters on pay and leave issues. Manages the bi-weekly collection and processing of time and attendance data for all SSA employees.

6. Coordinates with the National Business Center in Denver, SSA's payroll provider, on all payroll-related operational, budget and developmental matters.

7. Conducts research on HR modernization, providing recommendations for improving the effectiveness and efficiency of various personnel functions and programs through automation. Performs continuing review of HR technology to bring best practices to personnel operations in SSA.

8. Represents the Agency on interagency workgroups to resolve crosscutting HR automation issues. Serves as liaison with OPM, SSA's payroll provider, and other Federal agencies and monitoring authorities.

9. Directs the design and development of and manages day-to-day operations in support of the Personnel intranet site at the agency level.

Add to H, the Center for Personnel Policy and Staffing (S7BE), paragraph #1, second sentence: ''pay and'' compensation.

Delete from the second sentence of paragraph #1: ''appraisals and performance standards''.

Add to the second sentence of paragraph #1 after the word ''staffing'' and before the words ''personnel information'': ''employment and performance management and awards''.

Delete ''management communications'' from the second sentence of paragraph #1 after the words ''disclosure and * * *.'' Replace ''management communications'' with ''personnel delegations''.

Delete the first sentence from paragraph #2: ''Directs the development and operation of SSA performance and employee awards programs.''

Delete from the first sentence of paragraph #3: ''implement policies and regulations''.

Add to the first sentence of paragraph #3: Develops ''policies'' and ''implementing guidance''.

Add the word ''all'' to the second sentence of paragraph #3 after the word ''processes'' and before the word ''personnel actions''.

Delete paragraph #6 in its entirety. Replace paragraph #6 with the following: ''Establishes and maintains the Official Personnel Folders for SSA headquarters employees.''

Subchapter S7E

The Office of Civil Rights and Equal Opportunity

Section S7E.10 *The Office of Civil Rights and Equal Opportunity*— (Organization)

Retitle to read as follows: ''The Office of Civil Rights and Equal Opportunity, under the leadership of the Associate Commissioner, Office of Civil Rights and Equal Opportunity'', includes:

Retitle A., from ''The Director, Office of Civil Rights and Equal Opportunity (S7E)'' to ''The Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E).''

Retitle B., from ''The Immediate Office of the Director, Office of Civil Rights and Equal Opportunity (S7E)'' to ''The Deputy Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E).''

Add:

C. The Immediate Office of the Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E).

D. The Center for Cultural Diversity (S7EC).

E. The Center for Complaints Processing (S7EE).

F. The Center for Disability Services (S7EG).

Section S7E.20 *The Office of Civil Rights and Equal Opportunity*— (Functions)

Replace in its entirety as follows:

A. The Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OCREO's mission and for providing general supervision to the major components of OCREO.

B. The Deputy Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner prescribes.

C. The Immediate Office of the Associate Commissioner, Office of Civil Rights and Equal Opportunity (S7E) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Center for Cultural Diversity (S7EC).

1. Provides leadership, direction and guidance to the headquarters and field organizations in the formulating and implementing of SSA policies, regulations and procedures pertaining to the development of sound affirmative employment and equal opportunity programs. Approves, on behalf of the Associate Commissioner, Office of Civil Rights and Equal Opportunity, affirmative employment program plans prepared by components and regions. Develops the overall SSA affirmative employment program plan.

2. Develops guidelines and procedures for effective OCREO program planning and monitoring throughout SSA. Develops recommendations on affirmative

employment policy and operations for the Associate Commissioner for Civil Rights and Equal Opportunity.

3. Conducts and coordinates studies or analyses of SSA's human resources and operating policies and procedures to assess their EO impact.

4. Develops and tracks SSA's major initiatives that relate to EO and oversees their implementation.

5. Develops, implements, monitors and evaluates special recruitment plans, programs and projects for targeted equal opportunity groups.

6. Provides office automation support.

7. Administers the Federal Women's Program, Asian Pacific American Program, Hispanic Employment Program, Minority Concerns Program, and the American Indian and Alaska Native Program.

8. Provides central operational responsibility for EO functions and programs.

9. Administers the oversight of the EEO Advisory Groups.

E. The Center for Complaints Processing (S7EE)

1. Directs implementation and evaluation of the SSA Equal Employment Opportunity (EO) Discrimination Complaints Program and Alternative Dispute Resolution (ADR) Program for both Headquarters and the field. Provides advice, guidance and assistance to SSA officials concerning the discrimination complaints process and related management matters.

2. Provides leadership, guidance and direction in implementing SSA policies, regulations and procedures pertaining to the timely, accurate, fair and impartial processing of discrimination complaints throughout the Headquarters and field organizations. Formulates SSA policies, regulations and procedures pertaining to the EO discrimination complaints process and ADR process.

3. Provides overall direction regarding all aspects of SSA's discrimination complaints process and ADR process in order to ensure uniformity in complaints handling, resolutions and dispositions. Directs the preparation of guidelines on all complaints matters.

4. Receives and conducts inquiries and attempts resolution of informal complaints of discrimination. Advises complainants of their rights regarding the discrimination complaints process, ADR process and other related processes.

5. Receives and acknowledges formal complaints of discrimination and makes a determination whether to accept or dismiss the complaint/issue(s). Conducts investigations and oversees the process.

6. Prepares final Agency decisions on complaints of discrimination against SSA. Ensures compliance with any corrective or remedial action directed by SSA, the Equal Employment Opportunity Commission (EEOC) or any other agency having authority to so direct.

7. Develops litigation information and documentation for the Office of the General Counsel and the United States Attorney's Office in employment discrimination court suits filed against SSA. Prepares the Agency's briefs for complaints appealed to EEOC. Also, responds to interrogatories submitted in class complaints. Analyzes new and recent court decisions, public laws and Federal regulations for their impact on SSA complaints processing.

8. Directs special projects and studies of the various aspects of SSA's nationwide discrimination complaints process and ADR process to evaluate the overall effectiveness of the EO program. Directs the analysis of trends observed during projects and studies and implements new procedures as required.

9. Provides the authoritative interpretations on legal, regulatory and technical information regarding discrimination complaints to SSA management nationwide.

10. Reviews non-SSA EO issuances, EEOC and court decisions for applicability to SSA policy statements. Develops instructions and guidelines to transmit or implement EO policy decisions in SSA.

F. The Center for Disability Services (S7EG)

1. Provides program direction and guidance on a variety of issues pertaining to reasonable accommodation for employees with disabilities.

2. Evaluates and interprets policies and procedures and develops and recommends a range of alternatives for the solution of policy issues.

3. Directs and implements an SSA-wide program for providing readers, sign language interpreters, personal assistants, specialized equipment, assistive devices and selective placement.

4. Provides advice and assistance to all SSA components on agency-wide goals and objectives regarding the equal employment of people with disabilities throughout SSA.

5. Plans, conducts and coordinates multidisciplinary projects to resolve EO problems of a broad scope and provides leadership in the development of nationwide guidelines and/or policies and procedures also having national implications.

6. Administers the Program for Employees with Disabilities.

Subchapter S7G

Office of Training

Section S7G.10 *The Office of Training*—(Organization):

The Office of Training under the leadership of the Associate Commissioner, Office of Training (OT), includes:

Retitle A., from ''The Director, Office of Training (S7G)'' to ''The Associate Commissioner, Office of Training (S7G).''

Reletter B to C.

Retitle C, from ''The Immediate Office of the Director'' to ''The Immediate Office of the Associate Commissioner, Office of Training.''

Establish:

B. The Deputy Associate Commissioner, Office of Training (S7G).

D. The Center for Employee and Leadership Development (S7GK).

E. The Center for Curricula Development and Delivery (S7GL).

F. The Center for Training Technology (S7GM).

Section S7G.20 *The Office of Training*—(Functions):

A. The Associate Commissioner, Office of Training (S7G) is directly responsible to the Deputy Commissioner, Human Resources for carrying out OT's mission and for providing general supervision to the major component's of OT.

B. The Deputy Associate Commissioner, OT (S7G) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *Replace in its entirety:*

The Immediate Office of the Associate Commissioner, Office of Training (S7G) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities. It provides the Associate Commissioner with administrative and technical staff assistance. The Associate Commissioner's immediate administrative and technical staff plan, direct, coordinate and administer the activities relative to planning and executing budget activities. The staff interprets OPM training policies and formulate SSA training policy and procedures; maintains the Administration Instructions Manual System related to training policy; acts as OT Liaison with the Office of Personnel on such personnel matters as classification, position management, staffing, recruitment, performance management, and awards; and provides

overall support and coordination to the training function. Coordinate travel, training and conference attendance for office staff.

D. *Add:*

The Center for Employee and Leadership Development (S7GK).

1. Manages SSA's national career and leadership development programs from the highest executive levels of SSA managers (SES) to programs for non-management employees.

2. Has Agency-wide responsibility for national training curriculum to provide general skills training, including related developmental activities for non-supervisory personnel.

3. Directs, designs, develops, implements, conducts and evaluates all SSA supervisory, managerial and executive-level training for SSA's newly promoted and seasoned managers.

4. Conducts ongoing research to identify the best approaches to training in the areas of management, general, and systems-support training and in the area of career development programs. Administers contractor support.

5. Provides office automation support and consultant services for all of OT, Deputy Commissioner's office and training classrooms.

6. Directs, designs, develops and implements training to support Agency-wide computer software acquisitions, and administrative initiatives.

E. *Add:*

Center for Curricula Development and Delivery (S7GL).

1. Manages the conversion and provision of training materials in various delivery media; ensures accessibility of all training materials for employees with disabilities.

2. Directs the design, development, implementation and evaluation of disability related programmatic/technical training to meet the needs of SSA direct-service employees and components Agency-wide and the Disability Determination Services, including entry-level training. This includes support for all Agency-wide Accelerated Electronic Disability initiatives.

3. Directs the design, development, implementation and evaluation of Title II Retirement, Survivors and Auxiliary and Medicare related programmatic/technical training to meet the needs of SSA direct-service employees and components Agency-wide, including entry-level training, advanced training programs, and programmatic systems training.

4. Directs the design, development, implementation and evaluation of Title XVI Supplemental Security Income related programmatic/technical training to meet the needs of SSA direct-service employees and components Agency-wide, including entry-level training programs, advanced training programs, and programmatic systems training.

5. Develops guidelines and procedures to determine technical/programmatic training needs in all areas of responsibility, and reviews technical training programs Agency-wide.

6. Responsible for streamlining procedures for printing and delivery of training course materials via E-print.

7. Initiates independent studies and analyses to anticipate and identify new or changing programmatic or other training approaches in a dynamic organizational environment, and designs, develops and implements programs geared to new training delivery technologies and approaches.

F. *Add:*

The Center for Training Technology (S7GM).

1. Directs, designs, develops and manages SSA's Interactive Video Teletraining System for SSA employees and State DDSs.

2. Conducts ongoing research and evaluation to identify automated technologies and training delivery methods (*e.g.*, Interactive Video Teletraining, internet and intranet, training to the desktop, etc.) and instructional methodologies for application to training throughout SSA.

3. Monitors and evaluates Agency training and developmental activities to ensure desired results and effects through the Training Evaluation System.

4. Manages the evaluation and implementation of new technologies and training methods such as the use of distance learning and training to the desktop.

5. Manages special training initiatives such as the SSA Online University, knowledge management, E-learning initiatives and training administration.

6. Administers contractor support.

7. Manages office automation training efforts to provide basic LAN user training, electronic course information training for client server technology. Manages OT's training web site that includes a wide range of topics and materials.

Subchapter T

The Office of the Strategic Officer

Add the SAC Code ''TJ'' to the subchapter heading, the Mission, Organization, and Functions as follows:

Subchapter TJ

The Office of the Strategic Officer

Section TJ.00 *The Office of the Chief Strategic Officer*—(Mission):

Section TJ.10 *The Office of the Chief Strategic Officer*—(Organization):

Section TJ.20 The Office of the Chief Strategic Officer—(Functions):

Delete from E, The Office of Workforce Analysis, the third sentence from the end of the paragraph that reads: ''It develops, analyzes and interprets workforce-forecasting data and projects future workforce needs, including the types of skills and positions required.''

Dated: November 26, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–30546 Filed 12–9–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

Public Notice 4529; Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 22, 2004, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a presentation on the status of education in the United States and its impact on American-sponsored overseas schools, and selection of projects for the 2004 program.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to

January 12, 2003. Each visitor will be asked to provide a date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 4, 2003.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. 03–30617 Filed 12–9–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34429]

The New York City Economic Development Corporation—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Surface Transportation Board is instituting a declaratory order proceeding and requesting comments on the petition of the New York City Economic Development Corporation (NYCEDC), acting on behalf of the City of New York, NY (City), for an order confirming that: (1) Pursuant to 49 U.S.C. 10906, the construction project described in the petition is construction of spur or switching track that does not require Board approval; and (2) under 49 U.S.C. 10501(b)(2) and 10901, Federal law preempts the State of New York and the City from requiring permits or other prior approval with respect to the construction proposed here.

DATES: Any interested person may file with the Board written comments concerning NYCEDC's petition by January 9, 2004. Replies will be due on January 29, 2004.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Finance Docket No. 34429 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to petitioner's representative: Charles A. Spitulnik, McLeod, Watkinson & Miller, One Massachusetts Avenue, NW., Suite 800, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.

SUPPLEMENTARY INFORMATION: By petition filed on October 29, 2003, NYCEDC asks the Board to institute a declaratory order proceeding to confirm that: (1) The construction project described in the petition involves the construction of spur or switching track that does not require the Board's approval; and (2) Federal law preempts all otherwise applicable State and local laws with respect to this project.

NYCEDC states that the proposed construction project consists of the addition of a spur and/or switching track to, and the rehabilitation of, the end of the Travis Branch of the Staten Island Railroad (SIRR).[1] According to NYCEDC, this construction project is one part of a plan, called the Staten Island Railroad Reactivation Project, for reactivation of the operations of the former SIRR. On October 22, 2003, the Port Authority of New York and New Jersey (Port Authority) filed a petition for a declaratory order with respect to the proposed construction of a connector between the SIRR and the Chemical Coast Secondary Line. The Board issued a notice instituting a declaratory order proceeding and requesting comments on the Port Authority's petition. *Port Authority of New York and New Jersey—Petition for Declaratory Order,* STB Finance Docket No. 34428 (STB served Nov. 18, 2003). NYCEDC and the Port Authority are in the process of completing major upgrades to the SIRR to enable freight rail movements between Staten Island and the Howland Hook Container Terminal there, on the one hand, and freight rail lines in New Jersey, on the other.

According to petitioner, the segment of the SIRR on which the new track will be built is owned by the City and is managed by NYCEDC pursuant to a contract with the City. NYCEDC claims that the new track is required for the efficient pick up of trains from, and delivery to, a City Department of Sanitation facility (DSNY facility) being constructed on City-owned property at the Fresh Kills landfill site on Staten Island. NYCEDC states that the total length of the right-of-way for the new track will be approximately 6,744 feet, and that the track layout has been designed to minimize interference with the access roads from Victory Boulevard to the Visy Paper and Arthur Kill Power properties. The project will also entail replacing existing timber trestle bridges and timber and bituminous grade crossings, constructing a new Wye connection and potential retaining walls, replacing and repairing tracks at Arlington Yard, repairing and painting the Arthur Kill Lift Bridge, and constructing, replacing, and repairing bridges and bridge underpinnings.

NYCEDC indicates that rail service to and from the DSNY facility will be in unit trains approximately 4,700 feet long and will require that the trains be broken into sections. Petitioner maintains that the disassembly of empty railcar sections in an arriving unit train, and the assembly of full railcar sections into a unit train, will occur in two areas of the right-of-way that have a double-tracked rail layout. These sections are: (1) South of the Visy Paper entrance road and extending across Victory Boulevard and the Consolidated Edison property to the box culvert rail bridge; and (2) at the northern end of the Arthur Kill Power property.

The Board does not exercise licensing authority ''over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.'' 49 U.S.C. 10906. The determination of whether a particular track segment is a ''railroad line'' requiring Board authorization under 49 U.S.C. 10901(a), or an exempt spur, industrial, team, switching, or side track, turns on the intended use of the track segment. *Nicholson* v. *I.C.C.,* 711 F.2d 364, 368 (D.C. Cir. 1983), *cert. denied,* 464 U.S. 1056 (1984). According to NYCEDC, the intended use of the new track is for switching and for pick up and delivery to and from the DSNY facility. NYCEDC further claims that the new track is switching track according to the factors considered in *CNW—Aban. Exemp.—In McHenry County, IL,* 3 I.C.C.2d 366 (1987), *rev'd on other grounds sub nom. Illinois Commerce Com'n* v. *ICC,* 879 F.2d 917 (D.C. Cir. 1989), because the track is not long, will serve only one shipper,[2] is stub-ended, and will not invade the territory of another railroad or expand the involved market.

Petitioner argues that this case is materially different from *Effingham Railroad Company—Petition for Declaratory Order—Construction at Effingham, IL,* STB Docket No. 41986 (STB served Sept. 12, 1997) (*Effingham*), in which the Board found that construction of a ''stub-ended track that

[1] Petitioner indicates that the Board will soon receive a notice of a modified certificate of public convenience and necessity pursuant to 49 CFR 1150.21–.24, advising of the designation of CSX Transportation, Inc. and Norfolk Southern Railway Company as the modified certificate operators of certain lines of the SIRR that had been abandoned and then acquired by the City of New York and the State of New Jersey.

[2] Petitioner states that there is a possibility that another shipper, Visy Paper, may build a lead into its plant from the new track.

would be used exclusively for switching to and from present and future shippers in an industrial park'' fell within its jurisdiction. *Id.* Petitioner argues that *Effingham* involved a ''new carrier'' and a proposal to construct a track that would constitute the new carrier's entire operation, whereas in this case the track is ancillary to and supplemental to the SIRR.

NYCEDC says that it has advised the New York State Department of Environmental Conservation (NYSDEC) of its plans for the proposed construction as they have developed. Petitioner asserts, however, that NYSDEC is attempting to impose permitting and other requirements on it, including the implementation of the state environmental review process, and further asserts that its applications for the permits required by NYSDEC for fill to tidal wetlands have been pending for eleven months and remain unresolved.[3] NYCEDC contends that the state and local permitting and pre-clearance requirements imposed by NYSDEC give that body the ability to impede petitioner's construction of the facilities that are necessary to conduct operations.

NYCEDC maintains that, even though 49 U.S.C. 10906 removes from the Board the authority to approve the construction of the new track, the Board's jurisdiction over the track and its construction prevents any agencies of the state or local governments from imposing regulations or requirements that would have the effect of interfering with the project as it moves forward. According to petitioner, the Board has exclusive and plenary jurisdiction over rail transportation to the extent that it involves ''the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state.''[4] NYCEDC further argues that state and local permitting or pre-clearance requirements (including environmental requirements) are preempted because, by their nature, they interfere with interstate commerce by giving the state or local body the ability to deny the carrier the right to construct facilities or conduct operations. Petitioner maintains that the requirements that NYSDEC is seeking to impose here, based on state law, are preempted because they go beyond permissible ''police power'' regulation and amount to impermissible permitting and environmental review requirements.

Finally, NYCEDC asks the Board to expedite its handling of this petition. Specifically, petitioner asks the Board to issue its order in November 2003, *i.e.,* within 30 days of the filing of the petition. Petitioner maintains that the construction season in New York is short, and that it must begin offering construction contracts for bid immediately to allow contracts to be let in time for construction to commence according to schedule.

Granting this request would effectively preclude giving the public notice of and an opportunity to comment on this proceeding. The Board needs to afford notice and an opportunity for comment, given the importance of the project.[5] The Board will process this petition as expeditiously as possible, but must and will provide adequate time for the solicitation, receipt, and consideration of public comments.

By this notice, the Board is requesting comments on NYCEDC's petition.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–30445 Filed 12–9–03; 8:45 am]

BILLING CODE 4915–00–P

[3] According to petitioner, this review is being made pursuant to the New York State Environmental Quality Review Act, N.Y. Envtl. Conserv. Law 8–101, *et seq.* (McKinney 2003).

[4] In support, petitioner cites 49 U.S.C. 10501(b)(2) and *Friends of the Aquifer, et al.,* STB Finance Docket No. 33966 (STB served Aug. 15, 2001).

[5] Moreover, on November 19, 2003, NYSDEC filed a pleading in this matter indicating its intent to submit opposition to the petition and seeking time in which to do so.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34427]

Buffalo & Pittsburgh Railroad, Inc.—Lease and Operation Exemption—CSX Transportation, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 10902 for Buffalo & Pittsburgh Railroad, Inc., a Class II carrier, to lease from CSX Transportation, Inc., and operate a 40.8-mile rail line between milepost 10.4 at Glenshaw and milepost 51.2 at P&W Junction (New Castle), PA.

DATES: The exemption will be effective on December 23, 2003. Petitions to stay must be filed by December 15, 2003. Petitions to reopen must be filed by December 18, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34427 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative, Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Suite 200, Four Penn Center, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from ASAP Document Solutions by calling (202) 293–7878 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: December 4, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–30619 Filed 12–9–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed extension, without revision, of a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to, an information

collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is soliciting comment concerning the proposed extension, without change, of OMB approval of an information collection titled, ''Lending Limits—12 CFR 32.''

DATES: Comments should be submitted by February 9, 2004.

ADDRESSES: Comments should be directed to the OCC and to the OMB Desk Officer for OCC as follows:

OCC: Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Mail Stop 1–5, Attention: 1557–0221, Washington, DC 20219. Commenters are encouraged to submit comments by fax or electronic mail. Comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy comments at the OCC's Public Information Room. You can make an appointment to inspect the comments by calling (202) 874–5043.

OMB Desk Officer for OCC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *jlackeyj@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You may request additional information from John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Lending Limits—12 CFR 32.

Type of Review: Extension, without revision, of a currently approved collection.

OMB Control Number: 1557–0221.

Form Number: None.

Abstract: The information collections are found in 12 CFR 32.7(b). The information collections apply generally to all national banks and specifically to those national banks that wish to use exceptions to OCC's lending limits for 1–4 family residential real estate loans and loans to small businesses.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 2,140.

Estimated Number of Responses: 2,140.

Estimated Annual Burden Hours: 55,640 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 03–30618 Filed 12–9–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the E-Filing Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, January 8, 2004, from 3 to 4 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, January 8, 2004, from 3 to 4 p.m., eastern time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: December 3, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30639 Filed 12–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 6, 2004, from 3 p.m. EST to 4:30 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–(888)–912–1227, or (954)–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, January 6, 2004 from 3 p.m. EST to 4:30 p.m. EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–(888)–912–1227 or (954)–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–(888)–912–1227 or (954)–423–7977.

The agenda will include the following: Various IRS issues.

Dated: December 3, 2003.

Bernard Cost,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30640 Filed 12–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0518]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's entitlement to income-dependent benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0518'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Income Verification, VA Form 21–0161a.

OMB Control Number: 2900–0518.

Type of Review: Extension of currently approved collection.

Abstract: VA's compensation and pension programs require the accurate reporting of income by those who are in receipt of income-dependent benefits. VA Form 21–0161a solicits information from employers of beneficiaries who have been identified has having inaccurately reported their income to VA.

Affected Public: Business or other for-profit, not-for-profit institutions, farms, Federal government, and State, local, or tribal government.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: November 28, 2003.

By direction of the Acting Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30572 Filed 12–9–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0572]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the monetary allowance for a child of a Vietnam veteran born with spina bifida or birth defects.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0572'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Spina Bifida Benefits, VA Form 21–0304.

OMB Control Number: 2900–0572.

Type of Review: Extension of a currently approved collection.

Abstract: 38 U.S.C 1815, Children of Women Vietnam Veterans Born with Certain Birth Defects, authorizes payment of monetary benefits to, or on behalf of, certain children of female veterans who served in Republic of Vietnam. To be eligible, the child must be the biological child; conceived after the date the veteran first served in Vietnam during the period February 28, 1961 to May 7, 1975; and have certain

birth defects resulting in permanent physical or mental disability.

38 U.S.C. 1805, Spina Bifida Benefits Eligibility, authorizes payment to a spina bifida child-claimant to parent(s) who performed active military, naval, or air service during the Vietnam era during the period January 9, 1962 to May 7, 1975. The child must be the natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam during the Vietnam era. Spina Bifida benefits are payable for all types of spina bifida except spina bifida occulta. The law does not allow payment of both benefits at the same time. If entitlement exists under both laws, benefits will be paid under 38 U.S.C. 1815.

VA Form 21–0304 is used to gather the necessary information to determine eligibility for a monetary allowance and appropriate level of payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 335 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

Dated: November 28, 2003.

By direction of the Acting Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30573 Filed 12–9–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0578]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to approve requests for preauthorization of certain health care services and benefits for children of Vietnam veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–0578'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles

a. Health Care for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects—Regulation.

b. Claim for Miscellaneous Expenses, VA Form 10–7959e.

OMB Control Number: 2900–0578.

Type of Review: Extension of a currently approved collection.

Abstract: VA's medical regulations 38 CFR part 17 (17.900 through 17.905) established regulations regarding provision of health care for women Vietnam veterans' children born with spina bifida and certain other covered birth defects. The information collected will be used to determine whether to approve requests for preauthorization of certain health care services and benefits for children of Vietnam veterans; the appropriateness of billings for such services; and to make decisions during the review and appeal process.

Beneficiaries complete VA Form 10–7959e to claim payment/reimbursement of expenses related to spina bifida and certain covered birth defects. Health care providers complete standard billing forms such as: Uniform Billing-Forms (UB) 92, and HCFA 1500, Medicare Health Insurance Claims Form. Without the requested information VA will be unable to determine the correct amount to reimburse providers for their services or beneficiaries for covered expenses.

Affected Public: Individuals or households, business or other for-profit, and not for profit institutions.

Estimated Total Annual Burden: 3,400 hours.

Estimated Average Burden Per Respondent: 6½ minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,600.

Estimated Total Annual Responses: 31,400.

Dated: November 28, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–30574 Filed 12–9–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 237

Wednesday, December 10, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16502; Airspace Docket No. 03–ACE–86]

Modification of Class E Airspace; Waverly, IA

Correction

In rule document 03–30018 beginning on page 67360 in the issue of Tuesday, December 2, 2003, make the following correction:

§ 71.1 [Corrected]

On page 67361, in the third column, in § 71.1, under the heading **ACE IA E5 WAVERLY, IA**, in the sixth line, ''with'' should read ''within''.

[FR Doc. C3–30018 Filed 12–9–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 10, 2003

Part II

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 740, 743, 772, and 774
December 2002 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 4, 5, 6, and 7 of the Commerce Control List, and Reporting Requirements; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 743, 772, and 774

[Docket No. 031017263–3263–01]

RIN 0694–AC85

December 2002 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 4, 5, 6, and 7 of the Commerce Control List, and Reporting Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL), which identifies items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, and 7 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

The purpose of this final rule is to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar List that were agreed upon in the December 2002 meeting, to make necessary revisions to reporting requirements and License Exception GOV restrictions, and to add a statement of understanding for medical equipment.

EFFECTIVE DATE: This rule is effective: December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–5400.

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

This rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with December 2002 revisions to the Wassenaar List of Dual-Use Goods and Technologies. This rule also revises language to provide a complete or more accurate description of controls. A detailed description of the revisions to the CCL is provided below.

Specifically, this rule makes the following amendments to the Commerce Control List:

Category 1—Materials, Chemical, ''Microorganisms,'' and Toxins

- ECCN 1B001 is amended by adding a technical note for 1B001.c.
- ECCN 1C006 is amended by revising paragraph 1C006.a.1 to make an editorial correction, *i.e.*, removing the ''or'' in the phrase ''Synthetic or silahydrocarbon oils'', so that it reads ''Synthetic silahydrocarbon oils''.

Category 2—Materials Processing

- ECCN 2B006 is amended by:

(a) Removing the ECCN Controls paragraph from the List of Items Controlled;

(b) Adding new text to 2B006.a; and

(c) Adding a new note to 2B006.c.

Category 3—Electronics

- ECCN 3A001 is amended by:

(a) Adding a new paragraph 3A001.a.1.c that adds a new parameter for integrated circuits, designed or rated as radiation hardened, and adding a note for this paragraph;

(b) Revising the parameters of 3A001.a.5.a.2 and 3A001.a.5.a.3 for analog-to-digital and digital-to-analog converter integrated circuits; and

(c) Adding a new paragraph 3A001.a.5.a.4 to add a new parameter for analog-to-digital converter integrated circuits.

Note: For commodities no longer controlled under ECCN 3A001, there is a license requirement under ECCN 3A991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCN 3A002 is amended by:

(a) Adding a new abbreviation ETSI to the note for 3A002.a.2;

(b) Adding a new paragraph 3A002.a.6 for digital instrumentation data recorders; and

(c) Revising the parameters for 3A002.c.1, d.1, e, and f.1.

Note: For commodities no longer controlled under ECCN 3A002, there is a license requirement under ECCN 3A992 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCN 3A991 is amended by:

(a) Revising the parameter for batteries in the note for 3A991.j from 26 cm^3 to 27 cm^3 for consistency with the note in 3A001.e.1; and

(b) Revising the parameters and reformatting 3A991.c for analog-to-digital converter integrated circuits, to continue controls for antiterrorism (AT) reasons for these commodities that were liberalized as a result of changes to the Wassenaar List of Dual-Use Goods and Technologies.

- ECCN 3B001 is amended by revising the parameter for 3B001.f.1.b for minimum resolvable feature size from 0.5 μm to 0.35 μm for ''stored program controlled'' lithography equipment.

Note: For commodities no longer controlled under ECCN 3B001, there is a license requirement under ECCN 3B991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCNs 3E001 and 3E002 are amended by revising the parameter in paragraph b.1 of the Note from 0.7 μm to 0.5 μm.

Category 4—Computers

- ECCN 4A002 is amended by making an editorial change to 4A002.b.2—revising ''bits'' to ''bit''.
- ECCN 4A003 is amended by:

(a) Revising the ''composite theoretical performance'' (CTP) parameter in 4A003.b from 28,000 millions of theoretical operations per seconds (MTOPS) to 190,000 MTOPS;

(b) Making conforming changes of the revised CTP parameter to the AT and XP controls and the Note in the License Requirements section; and

(c) Removing the phrase ''or digital-to-analog'' in the CTP paragraph of the License Exception section, because 4A003.e and 3A001.a.5.a only refer to analog-to-digital.

Note: For commodities no longer controlled under ECCN 4A003, there is a license requirement under ECCN 4A994 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

- ECCN 4D001 is amended by:

(a) Making conforming changes of the revised CTP parameter in 4A003.b to the XP control in the License Requirements section;

(b) Making the existing heading paragraph (a) in the items paragraph of the List of Items Controlled section; and

(c) Adding a new paragraph for other ''software''.

• ECCN 4D994 is amended by revising the heading to prevent an overlap of controls between 4D001 and 4D994.

• ECCN 4E001 is amended by:

(a) Making conforming changes of the revised CTP parameter in 4A003.b to the XP control in the License Requirements section;

(b) Making the existing heading paragraph (a) in the items paragraph of the List of Items Controlled section; and

(c) Adding a new paragraph for other ''technology''.

• ECCN 4E992 is amended by revising the heading to prevent an overlap of controls between 4E001 and 4E992.

Category 5—Part I—Telecommunications

• ECCN 5A001 is amended by:

(a) Adding new text regarding frequency range and output power in 5A001.b.2.b.2;

(b) Adding ''output'' after ''voice coding'' in 5A001.b.6; and

(c) Adding a new technical note after 5A001.b.6.

• ECCN 5A991 is amended by correcting the numbering of the paragraphs in 5A991.b.6.

• ECCN 5B001 is amended by:

(a) Revising the parameter for radio equipment employing quadrature-amplitude-modulation (QAM) techniques from ''above level 128'' to ''above level 256'' in 5B001.b.4; and

(b) Revising text regarding equipment employing ''common channel signaling'' in 5B001.b.5.

Note: For commodities no longer controlled under ECCN 5B001, there is a license requirement under ECCN 5B991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

• ECCN 5D001 is amended by:

(a) Correcting a paragraph citation in the CIV and TSR eligibility paragraphs of the License Exceptions section from ''5A001.b.4'' to read ''5A001.b.5''; and

(b) Revising the parameter for radio equipment employing quadrature-amplitude-modulation (QAM) techniques from ''above level 128'' to ''above level 256'' in 5D001.d.4.

Note: For commodities no longer controlled under ECCN 5D001, there is a license requirement under ECCN 5D991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

• ECCN 5E001 is amended by:

(a) Revising the parameter for radio equipment employing quadrature-amplitude-modulation (QAM) techniques from ''above level 128'' to ''above level 256'' in 5E001.c.4.a; and

(b) Revising text regarding equipment employing ''common channel signaling'' in 5E001.c.5.

Note: For commodities no longer controlled under ECCN 5E001, there is a license requirement under ECCN 5E991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

Category 5—Part II—Information Security

• ECCN 5A002 is amended by:

(a) Moving and rearranging the text that describes what is not controlled in this entry from the Related Controls paragraph of the List of Items Controlled section to a Note in the beginning of the Item paragraph of the List of Items Controlled section;

(b) Dividing the existing text in paragraph (a) of the note (regarding ''personalized smart cards'') into sub-paragraph 1 and a N.B.; and

(c) Moving the related control note in paragraph 2 of the Related Definitions paragraph of the List of Items Controlled section to a N.B. following 5A002.a.

Category 6—Sensors

• ECCN 6A001 is amended by:

(a) Removing from LVS eligibility, because these items have been added to Annex 2 of the Wassenaar List:

(1) 6A001.a.1.b.1 object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 30 kHz to 2 kHz inclusive; and

(2) 6A001.a.2.a.4 hydrophones when designed to operation at depths exceeding 35 m with acceleration compensation.

(b) Removing paragraph 6A001.a.2.a.2.b piezoelectric polymers, and redesignating paragraph 6A001.a.2.a.2.c flexible piezoelectric ceramic materials as 6A001.a.2.a.2.b.

Note: For commodities no longer controlled under ECCN 6A001, there is a license requirement under ECCN 6A991 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

• ECCN 6A002 is amended by:

(a) Revising the parameter for image intensifier tubes in 6A002.a.2.a.2 from 15 μm to 12μm;

(b) Clarifying the text of 6A002.a.2.a.3 regarding photocathodes;

(c) Revising the parameter for photocathodes in 6A002.a.2.a.3.a from 240 μA/lm to 350 μA/lm;

(d) Deleting the word ''control'' and inserting ''apply to'' in the note for 6A002.a.2.a.3.c;

(e) Revising the parameter for specially designed components for image intensifier tubes in 6A002.a.2.b.1 from 15 μm to 12μm;

(f) Adding a new technical note 2 for 6A002.a.3 to define ''cross scan direction'' and ''scan direction'';

(g) Revising the text of 6A002.a.3.c to apply only to 2-dimensional arrays;

(h) Adding new paragraphs 6A002.a.3.d and .e to control non-''space-qualified'' linear (1-dimensional) ''focal plane arrays''

Fixing the abbreviation for milliradians to read ''mrad'' instead of ''mr'' in 6A002.b.1 and 6A002.b.2.b.2.

Note: For commodities no longer controlled under ECCN 6A002, there is a license requirement under ECCN 6A992 for exports and reexports to AT Column 1 countries of the Commerce Country Chart.

• ECCN 6A003 is amended by:

(a) Adding a new parameter ''peak response'' in 6A003.b.1 for video cameras incorporating solid state sensors; and

(b) Redesignating paragraphs 6A003.b.2.a and b.2.b as b.2.b and b.2.c. and adding a new parameter ''peak response'' in 6A003.b.2.a for scanning cameras and scanning camera systems.

• ECCNs 6A004 and 6A008 are amended by fixing the abbreviation for radian to read ''rad'' instead of ''r'' in 6A004.d.2, .d.3.c, .d.3.d.1, .d.3.d.2, and 6A008.j.2.

• ECCN 6A992 is amended to add a paragraph for ''direct view imaging equipment operating in the visible or infrared spectrum, incorporating image intensifier tubes having the characteristics listed in 6A992.a.1.'' to assure that this technology is not decontrolled, but retains an AT control.

• ECCNs 6E001 and 6E002 are amended by removing License Exception TSR eligibility for exports and reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for the ''development'' of 6A001.a.2.a.4.

Category 7—Navigation and Avionics

• ECCN 7A003 is amended by:

(a) Removing the ''or'' from the end of Note 1, paragraph 1.b; and

(b) Fixing the abbreviation for radian to read ''rad'' instead of ''r'' in 7A003, Note 1, paragraph 2.

All items removed from national security (NS) controls as a result of changes to the Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

• This rule amends part 772 of the EAR by adding a technical note to the definition of ''microcomputer microcircuit'' that was inadvertently not inserted in previous regulatory updates. The new technical note reads, ''Technical Note 2: The internal storage may be augmented by an external storage.''

• This rule clarifies the scope of Wassenaar reporting requirements that apply to License Exception GOV, and makes the following amendments to the Wassenaar Reporting Requirements in section 743.1 of the EAR to conform with changes made to the Wassenaar Arrangement's Annex 1 of the List of Dual-Use Goods and Technologies.

—This rule removes Wassenaar reporting requirements from part 743 for the following: 2B003; 6A001.a.1.b.1, a.2.c and .a.2.e (because these commodities are not eligible for License Exceptions LVS, GBS, or CIV); and 9D001, 9D002, 9D004.a and .c, 9E001, 9E002, 9E003.a.1., .a.2, .a.3, .a.4, .a.5, .a.8, and .a.9 (because these software and technology entries are not eligible for License Exceptions TSR or CIV).

—The Note to paragraph (c)(1)(ii) has also been modified to address the scope of reports required for 2D001 and 2E001.

—Paragraph (c)(2) has been modified to more closely harmonize with Annex 1 text for 4E001 and 4D001.

—This rule adds Wassenaar reporting requirements from part 743 for 5A001.b.5

• This rule makes the following amendments to the list of items ineligible for export or reexport under License Exception GOV, to conform with revisions to the Wassenaar Arrangement's Annex 2 of the List of Dual-Use Goods and Technologies:

• For exports and reexports of commodities and software to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (EURATOM), reexports by IAEA and EURATOM for official international safeguard use:

(1) The following items are added to the list of ineligible commodities:

(a) 6A001.a.1.b.1: object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 5 kHz to 10 kHz inclusive; and

(b) 6A001.a.2.a.4: Hydrophones when designed to operate at depths exceeding 35 m with acceleration compensation.

(2) In Supplement No. 1 to section 740.11, paragraph (a)(3), the following items are removed from the list of ineligible items:

(a) 6A003, 7D001, 7E001, 7E002, and 7E101 are removed because these items do not appear on Annex 2;

(b) The scope of 6A002 has been narrowed to 6A002.a.1.c, because this is the only paragraph in 6A002 that is on Annex 2;

(c) The scope of 6E001 and 6E002 have been narrowed to only exclude from eligibility technology according to the General Technology Note for the ''development'' and ''production'' of equipment in 6A002.a.1.c, because only this technology is both controlled for RS and listed on Annex 2. However, other technology under 6E001 and 6E002 are made ineligible for this license exception under other paragraphs in this supplement.

• For exports or reexports of items for official use within national territory by agencies of cooperating governments, and exports and reexports of items for diplomatic and consular missions of a cooperating government located in any country in Country Group B:

(1) The following items are added to the list of ineligible commodities:

(a) 6A001.a.1.b.1: object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 5 kHz to 10 kHz inclusive; and

(b) 6A001.a.2.a.4: Hydrophones when designed to operate at depths exceeding 35 m with acceleration compensation.

(2) In Supplement No. 1 to section 740.11, paragraph (b)(3), the following items are removed from the list of ineligible items:

(a) 6A003, 7D001, 7E001, 7E002, and 7E101 are removed because these items do not appear on Annex 2;

(b) The scope of 6A002 has been narrowed to 6A002.a.1.c, because this is the only paragraph in 6A002 that is on Annex 2; and

(c) The scope of 6E001 and 6E002 have been narrowed to only exclude from eligibility technology according to the General Technology Note for the ''development'' and ''production'' of equipment in 6A002.a.1.c, because only this technology is both controlled for RS and listed on Annex 2. However, other technology under 6E001 and 6E002 are made ineligible for this license exception under other paragraphs in this supplement.

This rule also adds a new Supplement No. 3, Statements of Understanding, to part 774 (the existing Supplement No. 3 is removed). This supplement will be used to place understandings affecting export controls that have been agreed upon in multilateral regimes or among agencies within the United States.

The first understanding to be placed in this supplement is a Wassenaar Arrangement statement of understanding concerning medical equipment. It states that commodities that are ''specially designed for medical end-use'' that ''incorporate'' commodities or software on the Commerce Control List in Supplement No. 1 to part 774 of the EAR that do not have a reason for control of Nuclear Nonproliferation (NP), Missile Technology (MT), or Chemical & Biological Weapons (CB), are classified as EAR99. This understanding has been a longstanding agreement in the Wassenaar Arrangement, and does not represent a policy or interpretation change under the EAR. BIS has implemented this understanding into decisions on classification requests and license applications, consistent with interpretation 2 in paragraph (b) of section 770.2, *i.e.*, the classification of the assembled machine also covers its component parts.

The statement of understanding has been modified from the original text as it appears in the Wassenaar Dual Use List of 2002, in order to harmonize the language with existing language in the EAR. BIS is providing guidance in notes to the medical statement of understanding to assist the public in determining what is considered ''specially designed for medical end-use'' and what ''incorporate'' means. The guidance provided for these terms only applies to the newly added Statement of Understanding for medical equipment.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the Notice of August 7, 2003, (68 FR 47833, 2003 WL 21877490), continues the Regulations in effect under the International Emergency Economic Powers Act

Saving Clause

Shipments of items removed from eligibility for export or reexport without a license, under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until January 9, 2004. In

addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and until March 9, 2004, BIS will accept license applications for items described either by the entries in effect immediately before December 10, 2003, or the entries described in this rule.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 740 and 743

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports and Foreign trade.

15 CFR Part 774

Exports, Foreign Trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 743, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 2. Section 740.11 is amended by revising:

■ (a) The introductory paragraph to (a)(2), to read as set out below, and

■ (b) The phrase ''Controlled by 9D001, specially designed for the'' to read ''Controlled by 9D001, specially designed or modified for the'' in paragraph (a)(2)(vi)(G).

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

* * * * *

(a) * * *

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) identified on the Commerce Control List may not be exported or reexported under this License Exception to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

* * * * *

■ 3. Supplement Number 1 to § 740.11 is amended by revising

■ (a) The introductory paragraph to (a)(1), paragraphs (a)(1)(vii)(D) and (E), (a)(3), the introductory paragraph to (b)(1), paragraphs (b)(1)(vii)(D) and (E), and (b)(3), to read as set forth below; and

■ (b) The phrase ''Controlled by 9D001, specially designed for the'' to read ''Controlled by 9D001, specially designed or modified for the'' in paragraphs (a)(1)(vi)(G) and (b)(1)(vi)(G).

Supplement No. 1 to § 740.11—Additional Restrictions on Use of License Exception Gov

(a) *Items for official use within national territory by agencies of a Cooperating Government.* * * *

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

* * * * *

(vii) ''Technology'', as follows: * * *

(D) Controlled by 6E001 for the ''development'' of equipment or ''software'' in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the ''production'' of equipment controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

* * * * *

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002.a.1.c, 6E001 technology according to the General Technology Note for the ''development'' of equipment in 6A002.a.1.c, and 6E002 technology according to the General Technology Note for the ''production'' of equipment in 6A002.a.1.c; or

* * * * *

(b) *Diplomatic and consular missions of a cooperating government.* * * *

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland,

Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.1.b.1 object detection and location systems having a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 30 Hz to 2 kHz inclusive, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3, 6B008, 8A001.b, 8A001.d, 8A002.o.3.b; and

* * * * *

(vii) ''Technology'', as follows: * * *

(D) Controlled by 6E001 for the ''development'' of equipment or ''software'' in 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the ''production'' of equipment controlled by 6A001.a.1.b.1, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

* * * * *

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002.a.1.c, 6E001 technology according to the General Technology Note for the ''development'' of equipment in 6A002.a.1.c, and 6E002 technology according to the General Technology Note for the ''production'' of equipment in 6A002.a.1.c; or

* * * * *

PART 743—[AMENDED]

■ 4. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* Pub. L. 106–508; 50 U.S.C. 1701 *et seq.;* E.O. 13206, 66 FR 18397, April 9, 2001.

■ 5. Section 743.1 is amended by:

■ (a) Revising paragraphs (c)(1)(ii), (c)(1)(vi), (c)(1)(viii), and (c)(2) as set forth below; and

■ (b) Revising all references to ''5A001.b.3;'' to read ''5A001.b.3 or b.5'' in paragraph (c)(1)(v).

§ 743.1 Wassenaar Arrangement.

* * * * *

(c) *Items for which reports are required.* (1) * * *

(ii) *Category 2:* 2D001 (certain items only; see Note to this paragraph), 2E001 (certain items only; see Note to this paragraph), and 2E002 (certain items only; see Note to this paragraph);

Note to paragraph (c)(1)(ii): *Reports for 2D001,* for ''software'', other than that controlled by 2D002, specially designed for the ''development'' or ''production'' of the equipment in 2B003 or 2B001.a or .b (changing 6 μm to 5.1 μm in 2B001.a.1 and 2B001.b.1.a; and adding ''a positioning accuracy with ''all compensations available'' equal to or less (better) than 5.1 μm along any linear axis'' to the existing text for 2B001.b.2) of the Commerce Control List (CCL).

Reports for 2E001, are for ''technology'' according to the General Technology Note for ''development'' of ''software'' as described in this paragraph for 2D001, or for the equipment in 2B003 or 2B001.a or .b (changing 6μm to 5.1μm in 2B001.a.1 and 2B001.b.1.a; and adding ''a positioning accuracy with ''all compensations available'' equal to or less (better) than 5.1 μm along any linear axis'' to the existing text for 2B001.b.2) of the CCL.

Reports for 2E002, are for ''technology'' according to the General Technology Note for ''production'' of the equipment in 2B003 or 2B001.a or .b (changing 6 μm to 5.1 μm in 2B001.a.1 and 2B001.b.1.a; and adding ''a positioning accuracy with ''all compensations available'' equal to or less (better) than 5.1 μm along any linear axis'' to the existing text for 2B001.b.2) of the CCL.

* * * * *

(vi) *Category 6:* 6A001.a.1.b (changing 10 kHz to 5 kHz and adding the text ''or a sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 5kHz to 10 kHz inclusive'' to the existing text in 6A001.a.1.b.1) , and .a.2.d; 6A002.b; 6A004.c and d; 6A006.g (excluding compensators which provide only absolute values of the earth's magnetic field as output (*i.e.*, the frequency bandwidth of the output extends from DC to at least 0.8 Hz) and h; 6A008.d, .h, and .k; 6D001 (for 6A004.c and .d and 6A008.d, .h, and .k); 6D003.a; 6E001 (for equipment and software listed in this paragraph); and 6E002 (for equipment listed in this paragraph);

* * * * *

(viii) *Category 9:* 9B001.b.

(2) Reports for ''software'' controlled by 4D001(that is specially designed), and ''technology'' controlled by 4E001 (according to the General Technology Note in Supplement No. 2 to part 774 of the EAR) are required for the ''development'' or ''production'' of computers controlled under 4A001.a.2, or for the ''development'' or ''production'' of ''digital computers'' having a CTP exceeding 75,000 MTOPS. For the calculation of CTP, see the Technical Note for Category 4 in the Commerce Control List (Supplement No. 2 to part 774 of the EAR).

* * * * *

PART 772—[AMENDED]

■ 6. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 7. In section 772.1, the definition for ''microcomputer microcircuit'' is revised to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Microcomputer microcircuit. (Cat 3) means a ''monolithic integrated circuit'' or ''multichip integrated circuit'' containing an arithmetic logic unit (ALU) capable of executing a series of general purpose instructions from an internal storage, on data contained in the internal storage.

Technical Note 1: The ''microprocessor microcircuit'' normally does not contain integral user-accessible storage, although storage present on-the-chip may be used in performing its logic function.

Technical Note 2: The internal storage may be augmented by an external storage.

Note: This definition includes chip sets which are designed to operate together to provide the function of a ''microprocessor microcircuit.''

* * * * *

PART 774—[AMENDED]

■ 8. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

Category 1—Materials, Chemicals, ''Microorganisms,'' and Toxins

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Number (ECCN) 1B001 is amended by revising the *items* paragraph in the List of Items Controlled section, to read as follows:

1B001 Equipment for the production of fibers, prepregs, preforms or ''composites'' controlled by 1A002 or 1C010, and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Filament winding machines of which the motions for positioning, wrapping and winding fibers are coordinated and programmed in three or more axes, specially designed for the manufacture of ''composite'' structures or laminates from ''fibrous or filamentary materials'';

b. Tape-laying or tow-placement machines of which the motions for positioning and laying tape, tows or sheets are coordinated and programmed in two or more axes, specially designed for the manufacture of ''composite'' airframe or ''missile'' structures;

c. Multidirectional, multidimensional weaving machines or interlacing machines, including adapters and modification kits, for weaving, interlacing or braiding fibers to manufacture ''composite'' structures;

Technical Note: For the purposes of 1B001.c the technique of interlacing includes knitting.

Note: 1B001.c does not control textile machinery not modified for the above end-uses.

d. Equipment specially designed or adapted for the production of reinforcement fibers, as follows:

d.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, pitch or polycarbosilane) into carbon fibers or silicon carbide fibers, including special equipment to strain the fiber during heating;

d.2. Equipment for the chemical vapor deposition of elements or compounds on heated filamentary substrates to manufacture silicon carbide fibers;

d.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

d.4. Equipment for converting aluminum containing precursor fibers into alumina fibers by heat treatment;

e. Equipment for producing prepregs controlled by 1C010.e by the hot melt method;

f. Non-destructive inspection equipment capable of inspecting defects three dimensionally, using ultrasonic or X-ray tomography and specially designed for ''composite'' materials.

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Number (ECCN) 1C006 is amended by revising the *items* paragraph in the List of Items Controlled section, to read as follows:

1C006 Fluids and lubricating materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Hydraulic fluids containing, as their principal ingredients, any of the following compounds or materials:

a.1. Synthetic silahydrocarbon oils, having all of the following:

Technical Note: For the purpose of 1C006.a.1, silahydrocarbon oils contain exclusively silicon, hydrogen and carbon.

a.1.a. A flash point exceeding 477 K (204 °C);

a.1.b. A pour point at 239 K (& − 34 °C) or less;

a.1.c. A viscosity index of 75 or more; *and*

a.1.d. A thermal stability at 616 K (343 °C); or

a.2. Chlorofluorocarbons, having all of the following:

Technical Note: For the purpose of 1C006.a.2, chlorofluorocarbons contain exclusively carbon, fluorine and chlorine.

a.2.a. No flash point;

a.2.b. An autogenous ignition temperature exceeding 977 K (704 °C);

a.2.c. A pour point at 219 K (− 54 °C) or less;

a.2.d. A viscosity index of 80 or more; *and*

a.2.e. A boiling point at 473 K (200 °C) or higher;

b. Lubricating materials containing, as their principal ingredients, any of the following compounds or materials:

b.1. Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than two ether or thio-ether functions or mixtures thereof; *or*

b.2. Fluorinated silicone fluids with a kinematic viscosity of less than 5,000 mm^2/s (5,000 centistokes) measured at 298 K (25 °C);

c. Damping or flotation fluids with a purity exceeding 99.8%, containing less than 25 particles of 200 μm or larger in size per 100 ml and made from at least 85% of any of the following compounds or materials:

c.1. Dibromotetrafluoroethane;

c.2. Polychlorotrifluoroethylene (oily and waxy modifications only); *or*

c.3. Polybromotrifluoroethylene;

d. Fluorocarbon electronic cooling fluids, having all of the following characteristics:

d.1. Containing 85% by weight or more of any of the following, or mixtures thereof:

d.1.a. Monomeric forms of perfluoropolyalkylether-triazines or perfluoroaliphatic-ethers;

d.1.b. Perfluoroalkylamines;

d.1.c. Perfluorocycloalkanes; *or*

d.1.d. Perfluoroalkanes;

d.2. Density at 298 K (25 °C) of 1.5 g/ml or more;

d.3. In a liquid state at 273 K (0 °C); *and*

d.4. Containing 60% or more by weight of fluorine.

Technical Note: For the purpose of 1C006:

a. Flash point is determined using the Cleveland Open Cup Method described in ASTM D–92 or national equivalents;

b. Pour point is determined using the method described in ASTM D–97 or national equivalents;

c. Viscosity index is determined using the method describe in ASTM D–2270 or national equivalents;

d. Thermal stability is determined by the following test procedure or national equivalents:

Twenty ml of the fluid under test is placed in a 46 ml type 317 stainless steel chamber containing one each of 12.5 mm (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60% Cu, 39% Zn, 0.75% Sn);

The chamber is purged with nitrogen, sealed at atmospheric pressure and the temperature raised to and maintained at 644 ± 6 K (371 ± 6 °C) for six hours;

The specimen will be considered thermally stable if, on completion of the above procedure, all of the following conditions are met:

1. The loss in weight of each ball is less than 10 mg/mm^2 of ball surface;

2. The change in original viscosity as determined at 311 K (38 °C) is less than 25%; and

3. The total acid or base number is less than 0.40;

e. Autogenous ignition temperature is determined using the method described in ASTM E–659 or national equivalents.

Category 2—Materials Processing

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B006 is amended by removing the *ECCN Controls* paragraph and revising the *items* paragraph in the List of Items Controlled section, to read as follows:

2B006 Dimensional inspection or measuring systems and equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Computer controlled, ''numerically controlled'' or ''stored program controlled'' co-ordinate measuring machines (CMM), having a three dimensional length (volumetric) maximum permissible error of indication (MPE_E) at any point within the operating range of the machine (*i.e.*, within the length of axes) equal to or less (better) than (1.7 + L/1,000) μm (L is the measured length in mm) tested according to ISO 10360–2 (2001);

b. Linear and angular displacement measuring instruments, as follows:

b.1. Linear displacement measuring instruments having any of the following:

Technical Note: For the purpose of 2B006.b.1 ''linear displacement'' means the

change of distance between the measuring probe and the measured object.

b.1.a. Non-contact type measuring systems with a ''resolution'' equal to or less (better) than 0.2 μm within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems having all of the following characteristics:

b.1.b.1. ''Linearity'' equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ± 1 K; *or*

b.1.c. Measuring systems having all of the following: b.1.c.1. Containing a ''laser''; *and*

b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ± 1 K around a standard temperature and at a standard pressure, all of the following:

b.1.c.2.a. A ''resolution'' over their full scale of 0.1 μm or less (better); *and*

b.1.c.2.b. A ''measurement uncertainty'' equal to or less (better) than (0.2 + L/2,000) μm (L is the measured length in mm);

Note: 2B006.b.1 does not control measuring interferometer systems, without closed or open loop feedback, containing a ''laser'' to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

b.2. Angular displacement measuring instruments having an ''angular position deviation'' equal to or less (better) than 0.00025°;

Note: 2B006.b.2 does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

c. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better).

Note: Machine tools that can be used as measuring machines are controlled by this entry if they meet or exceed the criteria specified for the machine tool function or the measuring machine function.

Category 3—Electronics

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types:

''Monolithic integrated circuits'';

''Hybrid integrated circuits'';

''Multichip integrated circuits'';

''Film type integrated circuits'', including silicon-on-sapphire integrated circuits;

''Optical integrated circuits''.

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher;

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher; *or*

a.1.c. A fluence (integrated flux) of neutrons (1 MeV equivalent) of 5×10^{13} n/cm^2 or higher on silicon, or its equivalent for other materials;

Note: 3A001.a.1.c does not apply to Metal Insulator Semiconductors (MIS).

a.2. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or ''optical integrated circuits'' designed for ''signal processing'', field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125°C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55°C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55°C) to 398 K (125° C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. ''Microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits, having any of the following characteristics:

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. [RESERVED]

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate exceeding 150 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 5 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 20 ns;

a.5.a.3. A resolution of more than 12 bit but equal to or less than 14 bit with a total conversion time of less than 200 ns; *or*

a.5.a.4. A resolution of more than 14 bit with a total conversion time of less than 1 μs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a ''settling time'' of less than 10 ns;

Technical Note: 1. A resolution of n bit corresponds to a quantization of 2^n levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and ''optical integrated circuits'' designed for ''signal processing'' having all of the following:

a.6.a. One or more than one internal ''laser'' diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical ''basic gate propagation delay time'' of less than 0.1 ns; *or*

a.7.c. A toggle frequency exceeding 133 MHz;

Note: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. [RESERVED]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.1 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than ($N \log_2 N$)/20,480 ms, where N is the number of points;

Technical Note: When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note 1: 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; and

(b) Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.1 does not control non-''space-qualified'' tubes which meet all the following characteristics:

(a) An average output power equal to or less than 50 W; *and*

(b) Designed or rated for operation in any frequency band which meets all of the following characteristics:

(1) Exceeds 31 GHz but does not exceed 43.5 GHz; *and*

(2) Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a ''fractional bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being ''space qualified'';

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing ''monolithic integrated circuits'' having one or more active circuit elements; *and*

b.2.b. Operating at frequencies above 3 GHz;

Note 1: 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; and

(b) Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an ''instantaneous bandwidth'' of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 μs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave ''assemblies'' capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm^3;

Note: 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, ''signal processing'' devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 μs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 μs; *or*

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (*i.e.*, ''signal processing'' devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents, with any of the following:

d.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm^3 (*e.g.,* standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30°C) to above 343 K (70°C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours © being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20°C) to above 333 K (60°C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. ''Space qualified'' and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28°C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527°C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A001.e.3 does not control ''superconductive'' electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/mm^2;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ± 2.5 seconds of arc.

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A002 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

3A002 General purpose electronic equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1.Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (*e.g.,* using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; *or*

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ± 0.1 μs;

Note: Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

Note: 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU, the ETSI, or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; *or*

a.3.b. Being ''space qualified'';

Note: 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: See also 3A292.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; *and*

a.5.b. A continuous throughput of 2 Gbit/s or more;

Technical Note: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

a.6. Digital instrumentation data recorders, using magnetic disk storage technique, having all of the following:

a.6.a. Digitizing rate equal to or more than 100 million samples per second and a resolution of 8 bits or more; and

a.6.b. A continuous throughput of 1 Gbit/s or more;

b. ''Frequency synthesizer'', ''electronic assemblies'' having a ''frequency switching time'' from one selected frequency to another of less than 1 ms;

c. Radio frequency ''signal analyzers'', as follows:

c.1. ''Signal analyzers'' capable of analyzing frequencies exceeding 31.8 GHz but less than 37.5 GHz or exceeding 43.5 GHz;

c.2. ''Dynamic signal analyzers'' having a ''real-time bandwidth'' exceeding 500 kHz;

Note: 3A002.c.2 does not control those ''dynamic signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31.8 GHz;

d.2. A ''frequency switching time'' from one selected frequency to another of less than 1 ms; *or*

d.3. A single sideband (SSB) phase noise better than $-(126 + 20\log_{10}F - 20\log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

Note: 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 43.5 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 43.5 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than 1×10^{-11}/month; *or*

g.2. Being ''space qualified''.

Note: 3A002.g.1 does not control non-''space qualified'' rubidium standards.

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A991 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

3A991 Electronic devices and components not controlled by 3A001.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having any of the following:

a.1. A ''composite theoretical performance'' (''CTP'') of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.2. A clock frequency rate exceeding 25 MHz; *or*

a.3. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate of 2.5 Mbyte/s.

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having any of the following:

c.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 10 ns;

c.2. A resolution of 12 bit with a total conversion time of less than 200 ns;

c.3. A resolution of more than 12 bit but equal to or less than 14 bit with a total conversion time of less than 2 μs; *or*

c.4. A resolution of more than 14 bit with a total conversion time of less than 2 μs;

d. Field programmable logic devices having either of the following:

d.1. An equivalent gate count of more than 5000 (2 input gates); *or*

d.2. A toggle frequency exceeding 100 MHz;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms.

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; *or*

f.2. A typical ''basic propagation delay time'' of less than 0.4 ns.

g. Traveling wave tubes, pulsed or continuous wave, as follows:

g.1. Coupled cavity tubes, or derivatives thereof;

g.2. Helix tubes, or derivatives thereof, with any of the following:

g.2.a. An ''instantaneous bandwidth'' of half an octave or more; *and*

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An ''instantaneous bandwidth'' of less than half an octave; *and*

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.*, ''signal processing'' devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; *or*

i.2. A carrier frequency of 1 GHz or less; *and*

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

i.2.c. A dispersive delay of more than 10 microseconds.

j. Batteries, as follows:

Note: 3A991.j does not control batteries with volumes equal to or less than 27 cm^3 (*e.g.*, standard C-cells or UM–2 batteries).

j.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30°C) to above 343 K (70°C);

j.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours © being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20°C) to above 333 K (60°C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

k. ''Superconductive'' electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

Note: 3A991.k does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

k.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 A/mm^2.

l. Circuits or systems for electromagnetic energy storage, containing components manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

1.1. Resonant operating frequencies exceeding 1 MHz;

1.2. A stored energy density of 1 MJ/M^3 or more; *and*

1.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B001 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled), and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. ''Stored program controlled'' equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing a layer thickness uniform to less than ±2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. ''Stored program controlled'' equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV;

b.3. Direct write capability; *or*

b.4. Being capable of high energy oxygen implant into a heated semiconductor material ''substrate'';

c. ''Stored program controlled'' anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Designed or optimized to produce critical dimensions of 0.3 μm or less with ±5% 3 sigma precision; *or*

c.1.b. Designed for generating less than 0.04 $particles/cm^2$ with a measurable particle size greater than 0.1 μm in diameter;

c.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

c.2.a. Designed or optimized to produce critical dimensions of 0.3 μm or less with ±5% 3 sigma precision; *or*

c.2.b. Designed for generating less than 0.04 $particles/cm^2$ with a measurable particle size greater than 0.1 μm in diameter;

d. ''Stored program controlled'' plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

d.1.a. Designed or optimized to produce critical dimensions of 0.3 μm or less with ±5% 3 sigma precision; *or*

d.1.b. Designed for generating less than 0.04 $particles/cm^2$ with a measurable particle size greater than 0.1 μm in diameter;

d.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

d.2.a. Designed or optimized to produce critical dimensions of 0.3 μm or less with ±5% 3 sigma precision; *or*

d.2.b. Designed for generating less than 0.04 $particles/cm^2$ with a measurable particle size greater than 0.1 μm in diameter;

e. ''Stored program controlled'' automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B001.e. does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. ''Stored program controlled'' lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 350 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.35 μm or less;

Technical Note: The minimum resolvable feature size is calculated by the following formula:

$$MRF = \frac{\text{(an exposure light source wavelength in } \mu m) \times \text{(K factor)}}{\text{numerical aperture}}$$

Where the K factor = 0.7.

MRF = minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focused electron beam, ion beam or ''laser'' beam, having any of the following:

f.2.a. A spot size smaller than 0.2 μm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 μm; *or*

f.2.c. An overlay accuracy of better than ±0.20 μm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E001 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 and 3B992) or 3C.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definition: * * *

Items:

The list of items controlled is contained in the ECCN heading.

Note: 3E001 does not control ''technology'' for the ''development'' or ''production'' of:

(a) Microwave transistors operating at frequencies below 31 GHz;

(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(b.1) Using ''technology'' of 0.5 μm or more; *and*

(b.2) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E002 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

3E002 ''Technology'' according to the General Technology Note other than that controlled in 3E001 for the ''development'' or ''production'' of ''microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits having a ''composite theoretical performance'' (''CTP'') of 530 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bits or more.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

The list of items controlled is contained in the ECCN heading.

Note: 3E002 does not control ''technology'' for the ''development'' or ''production'' of:

(a) Microwave transistors operating at frequencies below 31 GHz;

(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(b.1) Using ''technology'' of 0.5 μm or more; and

(b.2) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A002 is amended by revising the ''Items'' paragraph in the List of Items Controlled section, to read as follows:

4A002 ''Hybrid computers'' and ''electronic assemblies'' and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Containing ''digital computers'' controlled by 4A003;

b. Containing analog-to-digital converters having all of the following characteristics:

b.1. 32 channels or more; *and*

b.2. A resolution of 14 bit (plus sign bit) or more with a conversion rate of 200,000 conversions/s or more.

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A003, is amended by revising the ''Heading'', the License Requirements section, the ''CTP'' paragraph in the License Exceptions section, and the ''items'' paragraph in the List of Items Controlled section, to read as follows:

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, as follows, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country chart
NS applies to 4A003.b and .c	NS Column 1.
NS applies to 4A003.a, .e, and .g	NS Column 2.
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006	MT Column 1.
CC applies to ''digital computers'' for computerized finger-print equipment	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on ''digital computers'' with a CTP ≥ 6 but ≤ 190,000 MTOPS)	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''digital computers'' with a CTP greater than 190,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

Note: For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, no license is required (NLR) for computers with a CTP not greater than 190,000 MTOPS and for ''electronic assemblies'' described in 4A003.c that are not capable of exceeding a CTP greater than 190,000 MTOPS in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Exceptions

LVS: * * *

GBS: * * *

CTP: Yes, for computers controlled by 4A003.a or .b, and ''electronic assemblies'' controlled by 4A003.c, to the exclusion of other technical parameters, with the

exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.

CIV: * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

Note 1: 4A003 includes the following:
a. Vector processors;
b. Array processors;
c. Digital signal processors;
d. Logic processors;
e. Equipment designed for ''image enhancement'';
f. Equipment designed for ''signal processing''.

Note 2: The control status of the ''digital computers'' and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:
a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;
b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; and
N.B. 1: The control status of ''signal processing'' or ''image enhancement'' equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.
N.B. 2: For the control status of ''digital computers'' or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).
c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. Designed or modified for ''fault tolerance'';

Note: For the purposes of 4A003.a., ''digital computers'' and related equipment are not considered to be designed or modified for ''fault tolerance'' if they utilize any of the following:

1. Error detection or correction algorithms in ''main storage'';
2. The interconnection of two ''digital computers'' so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;
3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or
4. The synchronization of two central processing units by ''software'' so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') exceeding 190,000 million theoretical operations per second (MTOPS);
c. ''Electronic assemblies'' specially designed or modified to be capable of enhancing performance by aggregation of ''computing elements'' (''CEs'') so that the ''CTP'' of the aggregation exceeds the limit in 4A003.b.;

Note 1: 4A003.c applies only to ''electronic assemblies'' and programmable interconnections not exceeding the limit in 4A003.b. when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A003.d, or 4A003.e.

Note 2: 4A003.c does not control ''electronic assemblies'' specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. [RESERVED]
e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;
f. [RESERVED]
g. Equipment specially designed to provide external interconnection of ''digital computers'' or associated equipment that allows communications at data rates exceeding 1.25 Gbyte/s.

Note: 4A003.g does not control internal interconnection equipment (*e.g.*, backplanes, buses) passive interconnection equipment, ''network access controllers'' or ''communication channel controllers''.

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D001 is amended by revising the ''Heading'', License Requirements section, and the ''items'' paragraph in the List of Items Controlled section, to read as follows:

4D001 ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment or ''software'' controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994), and other specified software, see List of Items Controlled.

License Requirements

Reason for Control: NS, CC, AT, NP, XP.

Control(s)	Country chart
NS applies to ''software'' for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1.
CC applies to ''software'' for computerized finger-print equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''software'' for computers with a CTP greater than 190,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment or ''software'' controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994).
b. ''Software'', other than that controlled by the heading, specially designed or modified for the ''development'' or ''production'' of:
b.1. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') exceeding 28,000 MTOPS; or
b.2. ''Electronic assemblies'' specially designed or modified for enhancing performance by aggregation of ''computing elements'' (''CEs'') so that the ''CTP'' of the aggregation exceeds the limit in 4D001.b.1.

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D994 is amended by revising the ''Heading'', to read as follows:

4D994 ''Software'' other than that controlled in 4D001 specially designed or modified for the ''development'', ''production'', or ''use'' of equipment controlled by 4A101, 4A994, 4B994, and materials controlled by 4C994.

* * * * *

■ 22. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E001 is amended by revising the ''Heading'', License Requirements section, and the ''items'' paragraph in the List of Items Controlled section, to read as follows:

4E001 ''Technology'' according to the General Technology Note, for the ''development'', ''production'' or ''use'' of equipment or ''software'' controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994), and other specified technology, see List of Items Controlled.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP.

Control(s)	Country chart
NS applies to ''technology'' for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003.	NS Column 1.
MT applies to ''technology'' for items controlled by 4A001.a and 4A101 for MT reasons.	MT Column 1.

Control(s)	Country chart
CC applies to ''technology'' for computerized fingerprint equipment controlled by 4A003 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''technology'' for computers with a CTP greater than 190,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. ''Technology'' according to the General Technology Note, for the ''development,'' ''production,'' or ''use'' of equipment or ''software'' controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994).

b. ''Technology'', other than that controlled by 4E001.a, specially designed or modified for the ''development'' or ''production'' of:

b.1. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') exceeding 28,000 MTOPS; or

b.2. ''Electronic assemblies'' specially designed or modified for enhancing performance by aggregation of ''computing elements'' (''CEs'') so that the ''CTP'' of the aggregation exceeds the limit in 4E001.b.1.

■ 23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E992 is amended by revising the ''Heading'', to read as follows:

4E992 ''Technology'' other than that controlled in 4E001 for the ''development'', ''production'', or ''use'' of equipment controlled by 4A994 and 4B994, materials controlled by 4C994, or ''software'' controlled by 4D993 or 4D994.

* * * * *

■ 24. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part I—Telecommunications, Export Control Classification Number (ECCN) 5A001 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

5A001 Telecommunications systems, equipment, and components.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation; *or*

a.3. Specially designed to operate outside the temperature range from 218 K (–55° C) to 397 K (124° C).

Note: 5A001.a.3 applies only to electronic equipment.

Note: 5A001.a.2 and 5A001.a.3 do not apply to equipment on board satellites.

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

b.1 Being underwater communications systems having any of the following characteristics:

b.1.a. An acoustic carrier frequency outside the range from 20 kHz to 60 kHz;

b.1.b. Using an electromagnetic carrier frequency below 30 kHz; *or*

b.1.c. Using electronic beam steering techniques;

b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having any of the following characteristics:

b.2.a. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; *or*

b.2.b. Having all of the following:

b.2.b.1. Automatically predicting and selecting frequencies and ''total digital transfer rates'' per channel to optimize the transmission; *and*

b.2.b.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the frequency range of 1.5 MHz or more but less than 30 MHz, or 250 W or more in the frequency range of 30 MHz or more but not exceeding 87.5 MHz, over an ''instantaneous bandwidth'' of one octave or more and with an output harmonic and distortion content of better than −80 dB;

b.3. Being radio equipment employing ''spread spectrum'' techniques, including ''frequency hopping'' techniques, having any of the following characteristics:

b.3.a. User programmable spreading codes; *or*

b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

Note: 5A001.b.3.b does not control radio equipment specially designed for use with civil cellular radio-communications systems.

Note: 5A001.b.3 does not control equipment operating at an output power of 1.0 Watt or less.

b.4 Being radio equipment employing ''time-modulated ultra-wideband'' techniques, having user programmable channelizing or scrambling codes;

b.5. Being digitally controlled radio receivers having all of the following:

b.5.a. More than 1,000 channels;

b.5.b. A ''frequency switching time'' of less than 1 ms;

b.5.c. Automatic searching or scanning of a part of the electromagnetic spectrum; *and*

b.5.d. Identification of the received signals or the type of transmitter; *or*

Note: 5A001.b.5 does not control radio equipment specially designed for use with civil cellular radio-communications systems.

b.6. Employing functions of digital ''signal processing'' to provide voice coding output at rates of less than 2,400 bit/s.

Technical Note: For variable rate voice coding, 5A001.b.6 applies to the voice coding output of continuous speech.

c. Optical fiber communication cables, optical fibers and accessories, as follows:

c.1. Optical fibers of more than 500 m in length specified by the manufacturer as being capable of withstanding a proof test tensile stress of 2×109 N/m^2 or more;

Technical Note: Proof Test: on-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20° C) and relative humidity 40%. Equivalent national standards may be used for executing the proof test.

c.2. Optical fiber cables and accessories designed for underwater use.

Note: 5A001.c.2 does not control standard civil telecommunication cables and accessories.

N.B. 1: For underwater umbilical cables, and connectors thereof, see 8A002.a.3.

N.B. 2: For fiber-optic hull penetrators or connectors, see 8A002.c.

d. ''Electronically steerable phased array antennae'' operating above 31 GHz.

Note: 5A001.d does not control ''electronically steerable phased array antennae'' for landing systems with instruments meeting ICAO standards covering microwave landing systems (MLS).

■ 25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part I—Telecommunications, Export Control Classification Number (ECCN) 5A991 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

5A991 Telecommunication equipment, not controlled by 5A001.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Any type of telecommunications equipment, not controlled by 5A001.a,

specially designed to operate outside the temperature range from 219 K (−54 °C) to 397 K (124 °C).

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

Note: Telecommunication transmission equipment:

a. Categorized as follows, or combinations thereof:

1. Radio equipment (*e.g.*, transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical mutiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G701);
10. ''Stored program controlled'' digital crossconnection equipment;
11. ''Gateways'' and bridges;
12. ''Media access units''; and

b. Designed for use in single or multi-channel communication via any of the following:

1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation; or
5. Underwater acoustic wave propagation.

b.1. Employing digital techniques, including digital processing of analog signals, and designed to operate at a ''digital transfer rate'' at the highest multiplex level exceeding 45 Mbit/s or a ''total digital transfer rate'' exceeding 90 Mbit/s;

Note: 5A991.b.1 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b.2. Modems using the ''bandwidth of one voice channel'' with a ''data signaling rate'' exceeding 9,600 bits per second;

b.3. Being ''stored program controlled'' digital cross connect equipment with ''digital transfer rate'' exceeding 8.5 Mbit/s per port.

b.4. Being equipment containing any of the following:

b.4.a. ''Network access controllers'' and their related common medium having a ''digital transfer rate'' exceeding 33 Mbit/s; *or*

b.4.b. ''Communication channel controllers'' with a digital output having a ''data signaling rate'' exceeding 64,000 bit/s per channel;

Note: If any uncontrolled equipment contains a ''network access controller'', it cannot have any type of telecommunications interface, except those described in, but not controlled by 5A991.b.4.

b.5. Employing a ''laser'' and having any of the following characteristics:

b.5.a. A transmission wavelength exceeding 1,000 nm; *or*

b.5.b. Employing analog techniques and having a bandwidth exceeding 45 MHz;

Note: 5A991.b.5.b does not control commercial TV systems.

b.5.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

b.5.d. Employing wavelength division multiplexing techniques; *or*

b.5.e. Performing ''optical amplification'';

b.6. Radio equipment operating at input or output frequencies exceeding:

b.6.a. 31 GHz for satellite-earth station applications; *or*

b.6.b. 26.5 GHz for other applications;

Note: 5A991.b.6. does not control equipment for civil use when conforming with an International Telecommunications Union (ITU) allocated band between 26.5 GHz and 31 GHz.

b.7. Being radio equipment employing any of the following:

b.7.a. Quadrature-amplitude-modulation (QAM) techniques above level 4 if the ''total digital transfer rate'' exceeds 8.5 Mbit/s;

b.7.b. QAM techniques above level 16 if the ''total digital transfer rate'' is equal to or less than 8.5 Mbit/s; *or*

b.7.c. Other digital modulation techniques and having a ''spectral efficiency'' exceeding 3 bit/s/Hz;

Notes: 1. 5A991.b.7 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

2. 5A991.b.7 does not control radio relay equipment for operation in an ITU allocated band:

a. Having any of the following:

a.1. Not exceeding 960 MHz; or

a.2. With a ''total digital transfer rate'' not exceeding 8.5 Mbit/s; and

b. Having a ''spectral efficiency'' not exceeding 4 bit/s/Hz.

b.8. Providing functions of digital ''signal processing'' as follows:

b.8.a. Voice coding at rates less than 2,400 bit/s;

b.8.b. Employing circuitry that incorporates ''user-accessible programmability'' of digital ''signal processing'' circuits exceeding the limits of 4A003.b.

c. ''Stored program controlled'' switching equipment and related signaling systems, having any of the following characteristics, functions or features, and specially designed components and accessories therefor:

Note: Statistical multiplexers with digital input and digital output which provide switching are treated as ''stored program controlled'' switches.

c.1. ''Data (message) switching'' equipment or systems designed for ''packet-mode operation'' and assemblies and components therefor, n.e.s.

c.2. Containing ''Integrated Services Digital Network'' (ISDN) functions and having any of the following:

c.2.a. Switch-terminal (*e.g.*, subscriber line) interfaces with a ''digital transfer rate'' at the highest multiplex level exceeding 192,000 bit/s, including the associated signaling channel (*e.g.*, 2B+D); or

c.2.b. The capability that a signaling message received by a switch on a given channel that is related to a communication on another channel may be passed through to another switch.

Note: 5A991.c does not preclude the evaluation and appropriate actions taken by the receiving switch or unrelated user message traffic on a D channel of ISDN.

c.3. Routing or switching of ''datagram'' packets;

c.4. Routing or switching of ''fast select'' packets;

Note: The restrictions in 5A991.c.3 and c.4 do not apply to networks restricted to using only ''network access controllers'' or to ''network access controllers'' themselves.

c.5. Multi-level priority and pre-emption for circuit switching;

Note: 5A991.c.5 does not control single-level call preemption.

c.6. Designed for automatic hand-off of cellular radio calls to other cellular switches or automatic connection to a centralized subscriber data base common to more than one switch;

c.7. Containing ''stored program controlled'' digital cross connect equipment with ''digital transfer rate'' exceeding 8.5 Mbit/s per port.

c.8. ''Common channel signaling'' operating in either non-associated or quasi-associated mode of operation;

c.9. ''Dynamic adaptive routing''

Note: 5A991.c.10 does not control packet switches or routers with ports or lines not exceeding the limits in 5A991.c.10.

c.10. Being packet switches, circuit switches and routers with ports or lines exceeding any of the following:

c.10.a. A ''data signaling rate'' of 64,000 bit/s per channel for a ''communications channel controller''; *or*

Note: 5A991.c.10.a does not control multiplex composite links composed only of communication channels not individually controlled by 5A991.b.1.

c.10.b. A ''digital transfer rate'' of 33 Mbit/s for a ''network access controller'' and related common media;

c.11. ''Optical switching'';

c.12. Employing ''Asynchronous Transfer Mode (''ATM'') techniques.

d. Optical fibers and optical fiber cables of more than 50 m in length designed for single mode operation;

e. Centralized network control having all of the following characteristics:

e.1. Receives data from the nodes; *and*

e.2. Process these data in order to provide control of traffic not requiring operator decisions, and thereby performing ''dynamic adaptive routing'';

Note: 5A991.e does not preclude control of traffic as a function of predictable statistical traffic conditions.

f. Phased array antennae, operating above 10.5 GHz, containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting International Civil Aviation Organization (ICAO) standards (microwave landing systems (MLS)).

g. Mobile communications equipment, n.e.s., and assemblies and components therefor; *or*

h. Radio relay communications equipment designed for use at frequencies equal to or

exceeding 19.7 GHz and assemblies and components therefor, n.e.s.

■ 26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part I—Telecommunications, Export Control Classification Number (ECCN) 5B001 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

5B001 Telecommunication test, inspection and production equipment, as follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definition: * * *

Items:

a. Equipment and specially designed components or accessories therefor, specially designed for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

Note: 5B001.a. does not control optical fiber characterization equipment.

b. Equipment and specially designed components or accessories therefor, specially designed for the ''development'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment:

b.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

b.2. Equipment employing a ''laser'' and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing ''optical amplification'';

b.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5B001.b.2.d. does not include equipment specially designed for the ''development'' of commercial TV systems.

b.3. Equipment employing ''optical switching'';

b.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 256; *or*

b.5. Equipment employing ''common channel signaling'' operating in non-associated mode of operation.

■ 27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part I—Telecommunications, Export Control Classification Number (ECCN) 5D001 is amended by revising the License Exceptions section, and the ''items'' paragraph in the List of Items Controlled section, to read as follows:

5D001 ''Software'', as described in the List of Items Controlled.

* * * * *

License Exceptions

CIV: Yes, except for ''software'' controlled by 5D001.a and specially designed for the ''development'' or ''production'' of items controlled by 5A001.b.5 TSR: Yes, except for exports and reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''software'' controlled by 5D001.a and specially designed for items controlled by 5A001.b.5.

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001 or 5B001.

b. ''Software'' specially designed or modified to support ''technology'' controlled by 5E001.

c. Specific ''software'' as follows:

c.1. ''Software'' specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. [Reserved];

c.3. ''Software'', other than in machine-executable form, specially designed for ''dynamic adaptive routing''.

d. ''Software'' specially designed or modified for the ''development'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment:

d.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

d.2. Equipment employing a ''laser'' and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; *or*

d.2.b. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5D001.d.2.b. does not control ''software'' specially designed or modified for the ''development'' of commercial TV systems.

d.3. Equipment employing ''optical switching''; *or*

d.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 256.

■ 28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part I—Telecommunications, Export Control Classification Number (ECCN) 5E001 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

5E001 ''Technology'', (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, functions or features or ''software'' controlled by 5A001, 5B001 or 5D001.

b. Specific ''technologies'', as follows:

b.1. ''Required'' ''technology'' for the ''development'' or ''production'' of telecommunications equipment specially designed to be used on board satellites;

b.2. ''Technology'' for the ''development'' or ''use'' of ''laser'' communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the ''development'' of digital cellular radio base station receiving equipment whose reception capabilities that allow multi-band, multi-channel, multi-mode, multi-coding algorithm or multi-protocol operation can be modified by changes in ''software'' ;

b.4. ''Technology'' for the ''development'' of ''spread spectrum'' techniques, including ''frequency hopping'' techniques.

c. ''Technology'' according the General Technology Note for the ''development'' or ''production'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment, functions or features:

c.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

c.2. Equipment employing a ''laser'' and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing ''optical amplification'' using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5E001.c.2.e. does not control ''technology'' for the ''development'' or ''production'' of commercial TV systems.

c.3. Equipment employing ''optical switching'';

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 256; *or*

c.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

Note: 5E001.c.4.b. does not control ''technology'' for the ''development'' or

''production'' of equipment designed or modified for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c.5. Equipment employing ''common channel signaling'' operating in non-associated mode of operation.

■ 29. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part II—''Information Security'', Export Control Classification Number (ECCN) 5A002 is amended by revising the ''Related Controls'', ''Related Definitions'', and ''Items'' paragraphs in the List of Items Controlled section, to read as follows:

5A002 Systems, equipment, application specific ''electronic assemblies'', modules and integrated circuits for ''information security'', as follows (see List of Items Controlled), and other specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: 5A002 does not control the items listed in paragraphs (a) through (f) in the Note in the items paragraph of this entry. These items are instead controlled under ECCN 5A992.

Related Definitions: N/A

Items:

Note: 5A002 does not control the following. However, these items are instead controlled under 5A992:

(a) ''Personalized smart cards'':

(1) Where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this Note; or

(2) For general public-use applications where the cryptographic capability is not user-accessible and it is specially designed and limited to allow protection of personal data stored within.

N.B.: If a ''personalized smart card'' has multiple functions, the control status of each function is assessed individually.

(b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers.

(c) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following:

(1) Execution of copy-protected ''software';

(2) Access to any of the following:

(a) Copy-protected contents stored on read-only media; or

(b) Information stored in encrypted form on media (*e.g.*, in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public; or

(3) Copying control of copyright protected audio/video data.

(d) Cryptographic equipment specially designed and limited for banking use or money transactions;

(e) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption.

N.B.: The term ''money transactions'' includes the collection and settlement of fares or credit functions.

(f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications.

Technical Note: Parity bits are not included in the key length.

a. Systems, equipment, application specific ''electronic assemblies'', modules and integrated circuits for ''information security'', as follows, and other specially designed components therefor:

N.B.: For the control of global navigation satellite systems receiving equipment containing or employing decryption (*e.g.*, GPS or GLONASS) see 7A005.

a.1. Designed or modified to use ''cryptography'' employing digital techniques performing any cryptographic function other than authentication or digital signature having any of the following:

Technical Notes:

1. Authentication and digital signature functions include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. ''Cryptography'' does not include ''fixed'' data compression or coding techniques.

Note: 5A002.a.1 includes equipment designed or modified to use ''cryptography'' employing analog principles when implemented with digital techniques.

a.1.a. A ''symmetric algorithm'' employing a key length in excess of 56-bits; *or*

a.1.b. An ''asymmetric algorithm'' where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (*e.g.*, RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.*, Diffie-Hellman over Z/pZ); *or*

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (*e.g.*, Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform cryptanalytic functions;

a.3. [RESERVED]

a.4. Specially designed or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for ''spread spectrum'' systems, including the hopping code for ''frequency hopping'' systems;

a.6. Designed or modified to use cryptographic techniques to generate channelizing or scrambling codes for ''time-modulated ultra-wideband'' systems;

a.7. Designed or modified to provide certified or certifiable ''multilevel security'' or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

a.8. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A001 is amended by revising the License Exceptions section, and the ''items'' paragraph in the List of Items Controlled section, to read as follows:

6A001 Acoustics.

* * * * *

License Exceptions

LVS: $3000; N/A for 6A001.a.1.b.1 object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 210 dB (reference 1 μ Pa at 1 m) for equipment with an operating frequency in the band from 30 kHz to 2 kHz inclusive; 6A001.a.2.a.1, a.2.a.2, a.2.a.4, a.2.a.5, 6A001.a.2.b; processing equipment controlled by 6A001.a.2.c, and specially designed for real time application with towed acoustic hydrophone arrays; a.2.e.1, a.2.e.2; and bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment specially designed for real time application with bottom or bay cable systems.

GBS: Yes for 6A001.a.1.b.4.

CIV:Yes for 6A001.a.1.b.4.

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems, equipment and specially designed components therefor, as follows:

Note: 6A001.a.1 does not control:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ± 20°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons;

2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems designed for sea bed topographic mapping, having all of the following:

a.1.a.1. Being designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.2. Being designed to measure depths exceeding 600 m below the water surface; *and*

a.1.a.3. Being designed to provide any of the following:

a.1.a.3.a. Incorporation of multiple beams any of which is less than 1.9°; *or*

a.1.a.3.b. Data accuracies of better than 0.3% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following:

a.1.b.1. A transmitting frequency below 10 kHz;

a.1.b.2. Sound pressure level exceeding 224dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

a.1.b.3. Sound pressure level exceeding 235 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

a.1.b.5. Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

a.1.b.6. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

a.1.b.6.a. Dynamic compensation for pressure; *or*

a.1.b.6.b. Incorporating other than lead zirconate titanate as the transduction element;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following:

Notes: 1. The control status of acoustic projectors, including transducers, specially designed for other equipment is determined by the control status of the other equipment.

2. 6A001.a.1.c does not control electronic sources that direct the sound vertically only, or mechanical (e.g., air gun or vapor-shock gun) or chemical (e.g., explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 mW/mm²/Hz for devices operating at frequencies below 10 kHz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 Mw/mm²/Hz for devices operating at frequencies below 10 kHz; *or*

Technical Note: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

a.1.c.3. Side-lobe suppression exceeding 22 dB;

a.1.d. Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed to operate at a range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m;

Note: 6A001.a.1.d includes:

a. Equipment using coherent ''signal processing'' between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle;

b. Equipment capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment and specially designed components therefor, as follows:

a.2.a. Hydrophones having any of the following characteristics:

Note: The control status of hydrophones specially designed for other equipment is determined by the control status of the other equipment.

a.2.a.1. Incorporating continuous flexible sensors or assemblies of discrete sensor elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.2. Having any of the following sensing elements:

a.2.a.2.a. Optical fibers; or

a.2.a.2.b. Flexible piezoelectric ceramic materials;

a.2.a.3. A hydrophone sensitivity better than -180dB at any depth with no acceleration compensation;

a.2.a.4. When designed to operate at depths exceeding 35 m with acceleration compensation; *or*

a.2.a.5. Designed for operation at depths exceeding 1,000 m;

Technical Note: Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 μPa. For example, a hydrophone of -160 dB (reference 1 V per μPa) would yield an output voltage of 10^{-8} V in such a field, while one of -180 dB sensitivity would yield only 10^{-9} V output. Thus, -160 dB is better than -180 dB.

a.2.b. Towed acoustic hydrophone arrays having any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m;

a.2.b.2. Designed or ''able to be modified'' to operate at depths exceeding 35m;

Technical Note: ''Able to be modified'' in 6A001.a.2.b.2 means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Heading sensors controlled by 6A001.a.2.d;

a.2.b.4. Longitudinally reinforced array hoses;

a.2.b.5. An assembled array of less than 40 mm in diameter;

a.2.b.6. Multiplexed hydrophone group signals designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; *or*

a.2.b.7. Hydrophone characteristics controlled by 6A001.a.2.a;

a.2.c. Processing equipment, specially designed for towed acoustic hydrophone arrays, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

a.2.d. Heading sensors having all of the following:

a.2.d.1. An accuracy of better than ± 0.5°; *and*

a.2.d.2. Designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m;

a.2.e. Bottom or bay cable systems having any of the following:

a.2.e.1. Incorporating hydrophones controlled by 6A001.a.2.a; *or*

a.2.e.2. Incorporating multiplexed hydrophone group signal modules having all of the following characteristics:

a.2.e.2.a. Designed to operate at depths exceeding 35 m or having an adjustable or removal depth sensing device in order to operate at depths exceeding 35 m; *and*

a.2.e.2.b. Capable of being operationally interchanged with towed acoustic hydrophone array modules;

a.2.f. Processing equipment, specially designed for bottom or bay cable systems, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

b. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

■ 31. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A002 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

6A002 Optical sensors.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Optical detectors, as follows:

Note: 6A002.a does not control germanium or silicon photodevices.

a.1. ''Space-qualified'' solid-state detectors, as follows:

a.1.a. ''Space-qualified'' solid-state detectors, having all of the following:

a.1.a.1. A peak response in the wavelength range exceeding 10 nm but not exceeding 300 nm; *and*

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b. ''Space-qualified'' solid-state detectors, having all of the following:

a.1.b.1. A peak response in the wavelength range exceeding 900 nm but not exceeding 1,200 nm; *and*

a.1.b.2. A response ''time constant'' of 95 ns or less;

a.1.c. ''Space-qualified'' solid-state detectors having a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all of the following:

a.2.a.1. A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of 12 μm or less; *and*

a.2.a.3. Any of the following photocathodes:

a.2.a.3.a. S–20, S–25 or multialkali photocathodes with a luminous sensitivity exceeding 350 μA/lm;

a.2.a.3.b. GaAs or GaInAs photocathodes; *or*

a.2.a.3.c. Other III-V compound semiconductor photocathodes;

Note: 6A002.a.2.a.3.c does not apply to compound semiconductor photocathodes with a maximum radiant sensitivity of 10 mA/W or less.

a.2.b. Specially designed components, as follows:

a.2.b.1. Microchannel plates having a hole pitch (center-to-center spacing) of 12 μm or less;

a.2.b.2. GaAs or GaInAs photocathodes;

a.2.b.3. Other III-V compound semiconductor photocathodes;

Note: 6A002.a.2.b.3 does not control compound semiconductor photocathodes with a maximum radiant sensitivity of 10 mA/W or less.

a.3. Non-''space-qualified'' ''focal plane arrays'', as follows:

Technical Notes:

1. Linear or two-dimensional multi-element detector arrays are referred to as ''focal plane arrays''.

2. For the purposes of 6A002.a.3. ''cross scan direction'' is defined as the axis parallel to the linear array of detector elements and the ''scan direction'' is defined as the axis perpendicular to the linear array of detector elements.

Note 1: 6A002.a.3 includes photoconductive arrays and photovoltaic arrays.

Note 2: 6A002.a.3 does not control:

a. Silicon ''focal plane arrays'';

b. Multi-element (not to exceed 16 elements) encapsulated photoconductive cells using either lead sulphide or lead selenide;

c. Pyroelectric detectors using any of the following:

c.1. Triglycine sulphate and variants;

c.2. Lead-lanthanum-zirconium titanate and variants;

c.3. Lithium tantalate;

c.4. Polyvinylidene fluoride and variants; or

c.5. Strontium barium niobate and variants.

a.3.a. Non-''space-qualified'' ''focal plane arrays'', having all of the following:

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm but not exceeding 1,050 nm; *and*

a.3.a.2. A response ''time constant'' of less than 0.5 ns;

a.3.b. Non-''space-qualified'' ''focal plane arrays'', having all of the following:

a.3.b.1. Individual elements with a peak response in the wavelength range exceeding 1,050 nm but not exceeding 1,200 nm; *and*

a.3.b.2. A response ''time constant'' of 95 ns or less;

a.3.c. Non-''space-qualified'' non-linear (2-dimensional) ''focal plane arrays'', having individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.3.d. Non-''space-qualified'' linear (1-dimensional) ''focal plane arrays'', having all of the following:

a.3.d.1. Individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 2,500 nm; *and*

a.3.d.2. Any of the following:

a.3.d.2.a. A ratio of scan direction dimension of the detector element to the cross-scan direction dimension of the detector element of less than 3.8; *or*

a.3.d.2.b. Signal processing in the element (SPRITE);

a.3.e. Non-''space-qualified'' linear (1-dimensional) ''focal plane arrays'', having individual elements with a peak response in the wavelength range exceeding 2,500 nm but not exceeding 30,000 nm.

b. ''Monospectral imaging sensors'' and ''multispectral imaging sensors'' designed for remote sensing applications, having any of the following:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 μrad (microradians); *or*

b.2. Being specified for operation in the wavelength range exceeding 400 nm but not exceeding 30,000 nm and having all the following;

b.2.a. Providing output imaging data in digital format; and

b.2.b. Being any of the following:

b.2.b.1. ''Space-qualified''; *or*

b.2.b.2. Designed for airborne operation, using other than silicon detectors, and having an IFOV of less than 2.5 mrad (milliradians).

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating any of the following:

c.1. Image intensifier tubes having the characteristics listed in 6A002.a.2.a; *or*

c.2. ''Focal plane arrays'' having the characteristics listed in 6A002.a.3.

Technical Note: ''Direct view'' refers to imaging equipment, operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically or by any other means.

Note: 6A002.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment specially designed for laboratory use.

d. Special support components for optical sensors, as follows:

d.1. ''Space-qualified'' cryocoolers;

d.2. Non-''space-qualified'' cryocoolers, having a cooling source temperature below 218 K (−55° C), as follows:

d.2.a. Closed cycle type with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers having bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive.

e. ''Space qualified'' ''focal plane arrays'' having more than 2,048 elements per array and having a peak response in the wavelength range exceeding 300 nm but not exceeding 900 nm.

■ 32. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A003 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

6A003 Cameras.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Instrumentation cameras and specially designed components therefor, as follows:

Note: Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using plug-ins available according to the camera manufacturer's specifications.

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

Note: 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of

recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/μs;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 μs per full frame; *and*

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

a.6. Plug-ins, having all of the following characteristics:

a.6.a. Specially designed for instrumentation cameras which have modular structures and that are controlled by 6A003.a; *and*

a.6.b. Enabling these cameras to meet the characteristics specified in 6A003.a.3, 6A003.a.4 or 6A003.a.5, according to the manufacturer's specifications.

b. Imaging cameras, as follows:

Note: 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having a peak response in the wavelength range exceeding 10nm, but not exceeding 30,000 nm and any of the following:

b.1.a. More than 4×10^6 ''active pixels'' per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4×10^6 ''active pixels'' per solid state array for color cameras incorporating three solid state arrays; *or*

b.1.c. More than 12×10^6 ''active pixels'' for solid state array color cameras incorporating one solid state array;

Technical Note: For the purposes of this entry, digital video cameras should be evaluated by the maximum number of ''active pixels'' used for capturing moving images.

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a.A peak response in the wavelength range exceeding 10 nm, but not exceeding 30,000 nm;

b.2.b. Linear detector arrays with more than 8,192 elements per array; *and*

b.2.c. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating ''focal plane arrays'' having the characteristics listed in 6A002.a.3.

Note: 6A003.b.4 does not control imaging cameras incorporating linear ''focal plane arrays'' with twelve elements or fewer, not employing time-delay-and-integration within the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; or

e. Medical equipment.

■ 33. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A004 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

6A004 Optics.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Optical mirrors (reflectors), as follows:

a.1. ''Deformable mirrors'' having either continuous or multi-element surfaces, and specially designed components therefor, capable of dynamically repositioning portions of the surface of the mirror at rates exceeding 100 Hz;

a.2. Lightweight monolithic mirrors having an average ''equivalent density'' of less than 30 kg/m^2 and a total mass exceeding 10 kg;

a.3. Lightweight ''composite'' or foam mirror structures having an average ''equivalent density'' of less than 30 kg/m^2 and a total mass exceeding 2 kg;

a.4. Beam steering mirrors more than 100 mm in diameter or length of major axis, that maintain a flatness of lambda/2 or better (lambda is equal to 633 nm) having a control bandwidth exceeding 100 Hz.

b. Optical components made from zinc selenide (ZnSe) or zinc sulphide (ZnS) with transmission in the wavelength range exceeding 3,000 nm but not exceeding 25,000 nm and having any of the following:

b.1. Exceeding 100 cm3 in volume; *or*

b.2. Exceeding 80 mm in diameter or length of major axis and 20 mm in thickness (depth).

c. ''Space-qualified'' components for optical systems, as follows:

c.1. Lightweighted to less than 20% ''equivalent density'' compared with a solid blank of the same aperture and thickness;

c.2. Substrates, substrates having surface coatings (single-layer or multi-layer, metallic or dielectric, conducting, semiconducting or insulating) or having protective films;

c.3. Segments or assemblies of mirrors designed to be assembled in space into an optical system with a collecting aperture equivalent to or larger than a single optic 1 m in diameter;

c.4. Manufactured from ''composite'' materials having a coefficient of linear thermal expansion equal to or less than 5×10^{-6} in any coordinate direction.

d. Optical control equipment, as follows:

d.1. Specially designed to maintain the surface figure or orientation of the ''space-qualified'' components controlled by 6A004.c.1 or 6A004.c.3;

d.2. Having steering, tracking, stabilization or resonator alignment bandwidths equal to or more than 100 Hz and an accuracy of 10 μrad (microradians) or less;

d.3. Gimbals having all of the following:

d.3.a. A maximum slew exceeding 5°;

d.3.b. A bandwidth of 100 Hz or more;

d.3.c. Angular pointing errors of 200 μrad (microradians) or less; *and*

d.3.d. Having any of the following:

d.3.d.1. Exceeding 0.15 m but not exceeding 1 m in diameter or major axis length and capable of angular accelerations exceeding 2 rad (radians)/s^2; *or*

d.3.d.2. Exceeding 1 m in diameter or major axis length and capable of angular accelerations exceeding 0.5 rad (radians)/s^2;

d.4. Specially designed to maintain the alignment of phased array or phased segment mirror systems consisting of mirrors with a segment diameter or major axis length of 1 m or more.

e. Aspheric optical elements having all of the following characteristics:

e.1. The largest dimension of the optical-aperture is greater than 400 mm;

e.2. The surface roughness is less than 1 nm (rms) for sampling lengths equal to or greater than 1 mm; *and*

e.3. The coefficient of linear thermal expansion's absolute magnitude is less than 3×10^{-6}/K at 25° C;

Technical Notes:

1. An ''aspheric optical element'' is any element used in an optical system whose imaging surface or surfaces are designed to depart from the shape of an ideal sphere.

2. Manufacturers are not required to measure the surface roughness listed in 6A004.e.2 unless the optical element was designed or manufactured with the intent to meet, or exceed, the control parameter.

Note: 6A004.e does not control aspheric optical elements having any of the following:

a. A largest optical-aperture dimension less than 1 m and a focal length to aperture ratio equal to or greater than 4.5:1;

b. A largest optical-aperture dimension equal to or greater than 1 m and a focal length to aperture ratio equal to or greater than 7:1;

c. Being designed as Fresnel, flyeye, stripe, prism or diffractive optical elements;

d. Being fabricated from borosilicate glass having a coefficient of linear thermal expansion greater than 2.5×10^{-6}/K at 25° C; or

e. Being an x-ray optical element having inner mirror capabilities (*e.g.*, tube-type mirrors).

N.B.: For aspheric optical elements specially designed for lithographic equipment, see 3B001.

■ 34. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A008 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

6A008 Radar systems, equipment and assemblies having any of the following characteristics (see List of Items

Controlled), and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Operating at frequencies from 40 GHz to 230 GHz and having an average output power exceeding 100 mW;

b. Having a tunable bandwidth exceeding ±6.25% of the center operating frequency;

Technical Note: The center operating frequency equals one half of the sum of the highest plus the lowest specified operating frequencies.

c. Capable of operating simultaneously on more than two carrier frequencies;

d. Capable of operating in synthetic aperture (SAR), inverse synthetic aperture (ISAR) radar mode, or sidelooking airborne (SLAR) radar mode;

e. Incorporating ''electronically steerable phased array antennae'';

f. Capable of heightfinding non-cooperative targets;

Note: 6A008.f does not control precision approach radar (PAR) equipment conforming to ICAO standards.

g. Specially designed for airborne (balloon or airframe mounted) operation and having Doppler ''signal processing'' for the detection of moving targets;

h. Employing processing of radar signals using any of the following:

h.1. ''Radar spread spectrum'' techniques; *or*

h.2. ''Radar frequency agility'' techniques;

i. Providing ground-based operation with a maximum ''instrumented range'' exceeding 185 km;

Note: 6A008.i does not control:

a. Fishing ground surveillance radar;

b. Ground radar equipment specially designed for en route air traffic control, provided that all the following conditions are met:

1. It has a maximum ''instrumented range'' of 500 km or less;

2. It is configured so that radar target data can be transmitted only one way from the radar site to one or more civil ATC centers;

3. It contains no provisions for remote control of the radar scan rate from the en route ATC center; and

4. It is to be permanently installed;

c. Weather balloon tracking radars.

j. Being ''laser'' radar or Light Detection and Ranging (LIDAR) equipment, having any of the following:

j.1. ''Space-qualified''; *or*

j.2. Employing coherent heterodyne or homodyne detection techniques and having an angular resolution of less (better) than 20 μrad (microradians);

Note: 6A008.j does not control LIDAR equipment specially designed for surveying or for meteorological observation.

k. Having ''signal processing'' sub-systems using ''pulse compression'', with any of the following:

k.1. A ''pulse compression'' ratio exceeding 150; *or*

k.2. A pulse width of less than 200 ns; *or*

l. Having data processing sub-systems with any of the following:

l.1. ''Automatic target tracking'' providing, at any antenna rotation, the predicted target position beyond the time of the next antenna beam passage;

Note: 6A008.l.1 does not control conflict alert capability in ATC systems, or marine or harbor radar.

l.2. Calculation of target velocity from primary radar having non-periodic (variable) scanning rates;

l.3. Processing for automatic pattern recognition (feature extraction) and comparison with target characteristic data bases (waveforms or imagery) to identify or classify targets; *or*

l.4. Superposition and correlation, or fusion, of target data from two or more ''geographically dispersed'' and ''interconnected radar sensors'' to enhance and discriminate targets.

Note: 6A008.l.4 does not control systems, equipment and assemblies designed for marine traffic control.

■ 35. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6A992 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

6A992 Optical Sensors, not controlled by 6A002.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Image intensifier tubes and specially designed components therefor, as follows:

a.1. Image intensifier tubes having all the following:

a.1.a. A peak response in wavelength range exceeding 400 nm, but not exceeding 1,050 nm;

a.1.b. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of less than 25 micrometers; *and*

a.1.c. Having any of the following:

a.1.c.1. An S–20, S–25 or multialkali photocathode; *or*

a.1.c.2. A GaAs or GaInAs photocathode;

a.2. Specially designed microchannel plates having both of the following characteristics:

a.2.a. 15,000 or more hollow tubes per plate; *and*

a.2.b. Hole pitch (center-to-center spacing) of less than 25 micrometers.

b. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating image intensifier tubes having the characteristics listed in 6A992.a.1.

■ 36. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6E001 is amended by revising the ''TSR'' paragraph in the License Exceptions section, to read as follows:

6E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment, materials or ''software'' controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).

* * * * *

License Exceptions

CIV: * * *

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) ''Technology'' for commodities controlled by 6A002.e, 6A004.e, or 6A008.j.1;

(3) ''Technology'' for ''software'' specially designed for ''space qualified'' ''laser'' radar or Light Detection and Ranging (LIDAR) equipment defined in 6A008.j.1 and controlled by 6D001 or 6D002;

(4) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for the ''development'' of the following: (a) Items controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e., 6A002.a.1.c, 6A008.l.3, 6B008, 6D003.a; (b) Equipment controlled by 6A001.a.2.c or 6A001.a.2.f when specially designed for real time applications; *or* (c) ''Software'' controlled by 6D001 and specially designed for the ''development'' or ''production'' of equipment controlled by 6A008.l.3 or 6B008; or

(5) Exports or reexports to Rwanda.

* * * * *

■ 37. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors, Export Control Classification Number (ECCN) 6E002 is amended by revising the ''TSR'' paragraph in the License Exceptions section, to read as follows:

6E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment or materials controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (except 6B995) or 6C (except 6C992 or 6C994).

* * * * *

License Exceptions

CIV: * * *

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) ''Technology'' for commodities controlled by 6A002.e, 6A004.e, 6A008.j.1;

(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for the ''development'' of the following: (a) Items controlled by 6A001.a.2.a.1, 6A001.a.2.a.2,

6A001.a.2.a.4, 6A001.a.2.a.5, 6A001.a.2.b, and 6A001.a.2.c; and (b) Equipment controlled by 6A001.a.2.e and 6A001.a.2.f when specially designed for real time applications; or (c) ''Software'' controlled by 6D001 and specially designed for the ''development'' or ''production'' of equipment controlled by 6A002.a.1.c, 6A008.l.3 or 6B008; or

(4) Exports or reexports to Rwanda.

* * * * *

■ 38. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A003 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

7A003 Inertial Navigation Systems (INS) and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Inertial navigation systems (gimballed or strapdown) and inertial equipment designed for ''aircraft'', land vehicle or ''spacecraft'' for attitude, guidance or control, having any of the following characteristics, and specially designed components therefor:

a.1. Navigation error (free inertial) subsequent to normal alignment of 0.8 nautical mile per hour (nm/hr) Circular Error Probable (CEP) or less (better); *or*

a.2. Specified to function at linear acceleration levels exceeding 10 g.

b. Hybrid Inertial Navigation Systems embedded with Global Navigation Satellite System(s) (GNSS) or with ''Data-Based Referenced Navigation'' (''DBRN'') System(s) for attitude, guidance or control, subsequent to normal alignment, having an INS navigation position accuracy, after loss of GNSS or ''DBRN'' for a period of up to 4 minutes, of less (better) than 10 meters Circular Error Probable (CEP).

Note 1: The parameters of 7A003.a and 7A003.b are applicable with any of the following environmental conditions:

1. Input random vibration with an overall magnitude of 7.7 g rms in the first half hour and a total test duration of one and one half hour per axis in each of the three perpendicular axes, when the random vibration meets the following:

a. A constant power spectral density (PSD) value of 0.04 g^2/Hz over a frequency interval of 15 to 1,000 Hz; *and*

b. The PSD attenuates with frequency from 0.04 g^2/Hz to 0.01 g^2/Hz over a frequency interval from 1,000 to 2,000 Hz;

2. A roll and yaw rate of equal to or more than +2.62 rad/s (150 deg/s); *or*

3. According to national standards equivalent to 1. or 2. of this note.

Note 2: 7A003 does not control inertial navigation systems that are certified for use on ''civil aircraft'' by civil authorities of a country in Country Group A:1.

Technical Notes:

1. 7A003.b refers to systems in which an INS and other independent navigation aids are built into a single unit (embedded) in order to achieve improved performance.

2. ''Circular Error Probable'' (''CEP'')—In a circular normal distribution, the radius of the circle containing 50 percent of the individual measurements being made, or the radius of the circle within which there is a 50 percent probability of being located.

■ 39. Part 774 is amended by revising Supplement No. 3, to read as follows:

Supplement No. 3 to Part 774—Statements of Understanding

Statement of Understanding—medical equipment: Commodities that are ''specially designed for medical end-use'' that ''incorporate'' commodities or software on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) that do not have a reason for control of Nuclear Nonproliferation (NP), Missile Technology (MT), or Chemical & Biological Weapons (CB) are designated by the number EAR99 (i.e., are not elsewhere specified on the Commerce Control List).

Notes applicable to State of Understanding related to Medical Equipment:

(1) ''Specially designed for medical end-use'' means designed for medical treatment or the practice of medicine (does not include medical research).

(2) ''Incorporate'' into medical equipment means to integrate with, or work indistinguishably into such equipment.

(3) Except for such software that is made publicly available consistent with § 734.3(b)(3) of the EAR, commodities and software ''specially designed for medical end-use'' remain subject to the EAR.

(4) See also § 770.2(b) interpretation 2, for other types of equipment that incorporate items on the Commerce Control List that are subject to the EAR.

(5) For computers used with medical equipment, see also ECCN 4A003 note 2 regarding the ''principal element'' rule.

(6) For commodities and software specially designed for medical end-use that incorporate an encryption or other ''information security'' item subject to the EAR, see also Note 1 to Category 5, Part II of the Commerce Control List.

Dated: December 2, 2003.

Peter Lichtenbaum,

Assistant Secretary.

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Federal Register

Wednesday,
December 10, 2003

Part III

The President

Proclamation 7742—National Pearl Harbor Remembrance Day, 2003

Federal Register
Vol. 68, No. 237
Wednesday, December 10, 2003

Presidential Documents

Title 3—

The President

Proclamation 7742 of December 5, 2003

National Pearl Harbor Remembrance Day, 2003

By the President of the United States of America

A Proclamation

More than 60 years ago, President Franklin Delano Roosevelt told Americans that December 7, 1941, was ''a date which will live in infamy.'' On that morning, America was attacked without warning and without provocation. More than 2,400 Americans died and 1,100 were wounded. Our country was changed forever. Following that attack, our citizens responded with the strength and resolve that characterizes America in times of adversity, and that same spirit and courage carried us to victory in World War II. On National Pearl Harbor Remembrance Day, we honor the lives lost in that attack and salute the veterans of World War II. We also pay tribute to all those now serving America to advance freedom around the world.

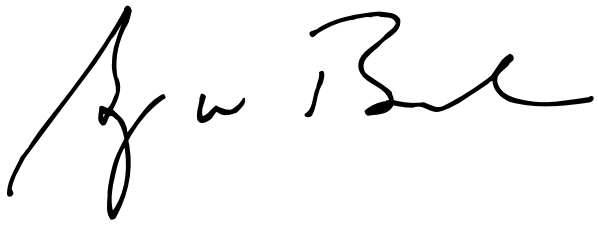
The USS ARIZONA Memorial in Honolulu, Hawaii, stands as a monument to that ship's 1,177 crew members who died as a result of the attack. Since the Memorial's dedication, more than 40 million visitors have honored the heroism of these brave sailors and marines. Laura and I had the opportunity to visit the Memorial in October of this year. It is a fitting tribute to the lives lost in defense of our freedom during the greatest global conflict in history.

America's liberty is sustained by the courage of the American people. Every generation of Americans has answered the call to protect the blessings of freedom and democracy. With the help of our friends and allies, the brave men and women of our Armed Forces are now engaged in a global war on terrorism. And as in the aftermath of the terrible attack on Pearl Harbor, our Nation will stay the course, and we will prevail.

The Congress, by Public Law 103–308, as amended, has designated December 7, 2003, as ''National Pearl Harbor Remembrance Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim December 7, 2003, as National Pearl Harbor Remembrance Day. I encourage all Americans to observe this solemn occasion with appropriate ceremonies and activities. I urge all Federal agencies, interested organizations, groups, and individuals to fly the flag of the United States at half-staff this December 7 in honor of those who died as a result of their service at Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 3185/P.L. 108–166

To designate the facility of the United States Postal Service located at 38 Spring Street in Nashua, New Hampshire, as the ''Hugh Gregg Post Office Building''. (Dec. 6, 2003; 117 Stat. 2030)

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